

10 MARCH 1948

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Wednesday, 10 March 1948

INTERATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE E. STUART McDOUGALL,
Member from the Dominion of Canada, not sitting from
0930 to 1200.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except HIRANUMA, HIROTA, SHIRATORI, and UMEZU, who are
5 represented by counsel. The Sugamo prison surgeon
6 certifies that they are ill and unable to attend the
7 trial today. The certificates will be recorded and
8 filed.

9 With the Tribunal's permission, the accused
10 KAYA will be absent from the courtroom for the entire
11 day conferring with his counsel.

12 Mr. Cunningham.

13 MR. CUNNINGHAM: Continuing at line 8, page 123:

14 We believe we have won the issue on the import-
15 ant points of fact raised by Count 5. We have found no
16 legal authority in support of the prosecution's theory
17 of the law as relates to the issues involved in Count 5
18 of the Indictment. Based upon the record we ask the
19 Tribunal to make the following findings of fact and law:

20 1. That this inquiry is limited to the acts of
21 the accused only, as individuals.

22 2. That Count 5 does not embrace an offense as
23 defined by the Charter.

24 3. That Count 5 does not embrace an offense as
25 defined by existing international law.

4. That states such as Germany, Italy, and
1 Japan cannot be charged with crimes, only individuals
2 are contemplated by the Charter.

3 5. That the Anti-Comintern Pact was not in
4 violation of international law and was a lawful exer-
5 cise of the sovereign right of Japan and Germany.

6 6. That the negotiations for the strengthening
7 of the Anti-Comintern Pact were also legitimate exer-
8 cises of the sovereign right of nations to make defensive
9 agreements with other nations. The negotiations failed.

10 7. That the Tripartite Pact was a defensive
11 agreement between three nations, and became a part of
12 the foreign policy of Japan, binding on all of its sub-
13 jects. That the Pact was also a lawful exercise of the
14 sovereign right of the signatory nations.

15 8. That the cultural agreement between the
16 nations and the economic negotiations were also
17 legitimate acts, not subject to judicial inquiry.

18 9. That all of the agreements between Japan,
19 Germany, and Italy mean just what they say and are not
20 ambiguous. That they do not need explanation or clari-
21 fication.

22 10. That all of the German-Japanese negoti-
23 ations were conducted at the instance of and in behalf
24 of the Japanese Government, under its instructions or
25

later ratified in accordance with diplomatic procedure.

1 11. THAT THERE WAS NO CO-OPERATION BETWEEN
2 GERMANY, JAPAN, AND ITALY.

3 a. That Germany wanted help from Japan. Japan
4 gave none when Germany needed it.

5 b. That Germany wanted assistance from Japan
6 in her battle with Britain; Japan declined to assist.

7 c. That Germany asked Japan to fight Russia;
8 Japan did the opposite and made a neutrality pact.

9 d. That Germany wanted America kept out of
10 the war; Japan attacked at Pearl Harbor.

11 e. That Germany wanted consultation; Japan
12 kept her plans and negotiations secret.

13 f. That Japan wanted No-Separate peace;
14 Germany surrendered. Italy joined the Allies. There
15 was no co-operation.
16

17 12. That Italy was a liability to both Japan
18 and Germany. (PP. 80-83.)

19 13. That the foreign policy of one nation or
20 group of nations is not subject to judicial inquiry by
21 other nations. It is a political matter and not one for
22 judicial determination.

23 14. That the record does not and could not dis-
24 close sufficient facts upon which to base a judgment on
25 Count 5. The issue is confined to the relations of these

1 accused with each other and to their government. This
2 Tribunal had no authority to inquire into the effect of
3 the acts of these accused beyond the Far East.

4 On these points we submit our case covering
5 the issues raised by Count 5. The question whether or
6 not there was any co-operation or collaboration between
7 the three nations, Japan, Germany, and Italy, to dominate
8 the world is not in issue here. Whether they joined to-
9 gether to accomplish war aims must be answered in the
10 negative, it is best answered in the words of General
11 Marshall, "Nor is there evidence of close strategic
12 co-ordination between Germany and Japan."

13 Mr. Logan will continue.

14 THE PRESIDENT: Mr. Logan.

15 MR. LOGAN: If the Tribunal please, this topic
16 is, "Japan was Provoked into a War of Self-Defense."

17 1. Thirteen years ago to the day before the
18 Japanese attack on Pearl Harbor announcing the commence-
19 ment of open hostilities in the Pacific, a group of
20 distinguished American statesmen were assembled in the
21 Capitol Building at Washington, D. C. Their purpose was
22 to discuss the advisability of the United States ratifi-
23 cation of the now famous Kellogg-Briand Peace Pact. In
24 the group was none other than the co-author of that
25 document himself, then Secretary of State, the Honorable

Frank B. Kellogg.

1 2. In the course of the recorded discussions
2 that took place Secretary Kellogg was asked this ques-
3 tion: "Suppose a country is not attacked -- suppose
4 there is an economic blockade * * *?" Secretary
5 Kellogg replied: "There is no such thing as a blockade
6 without you are in war." A Senator then said, "It is
7 an act of war," and Secretary Kellogg concurred saying,
8 "An act of war absolutely * * *."
9

10 3. During the same conference Secretary
11 Kellogg also stated to the body of Senators: "As I
12 have explained before, nobody on earth, probably,
13 could write an article defining 'self-defense' or
14 'aggressor' that some country could not get around;
15 and I made up my mind that the only safe thing for any
16 country to do was to judge for itself within its
17 sovereign rights whether it was unjustly attacked and
18 had a right to defend itself and it must answer to the
19 opinion of the world."^{a.}
20

21 4. The foregoing is not set forth for the
22 purpose of criticizing American statesmen or govern-
23 mental leaders but only to show that it is the solid
24 thought existing in the United States, at least, that
25 to interfere with a country's economic stability is a
(3. a. 70th Congress, Hearing of Committee on Foreign
Relations, Friday, Dec. 7, 1928.)

dire and drastic movement.

1 5. To indicate to this Tribunal that none
2 other than the co-author of the Pact of Paris regarded
3 such economic interference as an act of war absolutely
4 we have quoted from the language used by Secretary
5 Kellogg to reveal with conciseness and clarity that this
6 great and learned American admitted with extreme frank-
7 ness that it was the inherent right of a country to
8 judge whether it had a right to defend itself or not
9 based upon the factual situation confronting it.
10

11 6. The following remarks are designed to
12 assist the Tribunal in arriving at the true and real
13 picture existing in the Pacific area in the darkened
14 period before the advent of war, December 8, 1941. We
15 might well pose those questions: Did Japan instigate
16 and wage a war of aggression against the Western Powers
17 which was the result of premeditated planning, the
18 utterance of evilly prepared plans whose sole object was
19 directed at conquering and dominating the great powers
20 upon which it had depended with almost childlike faith
21 for its economic sustenance? Or, did Japan attempt to
22 exercise its internationally recognized sovereign right
23 of self-defense against encroachments by foreign powers
24 which threatened its very existence -- a decision which
25 no authority questions as being their prerogative?

1 7. The instruments of war are wide and varied.
2 The evolution of man with his advancement in science
3 with the ever increasing interdependence of nations
4 upon each other for their sustenance introduces into the
5 realm of warfare more than the explosion of gun powder
6 and the resultant killing of the enemy but other and
7 equally formidable methods of reducing the resistance of
8 an opposing nation and curbing it to the will of another.
9 Today we hear the shout round the world that economic
10 medicine is needed to forestall the disease of another
11 great world conflict. To deprive a nation of those
12 necessary commodities which enables its citizens and
13 subjects to exist is surely a method of warfare not
14 dissimilar to the violent taking of lives through ex-
15 plosives and force because it reduces opposition by
16 delayed action resulting in defeat just as surely as
17 through other means of conventional hostilities. It can
18 even be said to be of a more drastic nature than the
19 blasting of life by physical force for it aims at the
20 slow depletion of the morale and well-being of the
21 entire civilian population through the medium of slow
22 starvation.
23

24 8. The prosecution would have this learned
25 Tribunal believe that the Allies perpetrated economic
blockades against Japan which were aimed only at the

1 dimunition of military supplies but the evidence is that
2 the blockade affected all types of civilian goods and
3 trade, even food, as will be shown.

4 9. This was more than the old fashioned en-
5 circlement of a nation by ships of overwhelming superior-
6 ity and refusing to allow commerce to enter or leave. It
7 was the act of all powerful and greatly superior economic
8 states against a confessedly dependent island nation
9 whose existence and economics were predicated upon
10 world commercial relations.

11 10. The prosecution theory that the action of
12 the United States as taken was justifiable as a means
13 of curbing alleged Japanese aggression in China is
14 answered by the Japanese with its solid announcement that
15 the Western Powers refused to understand the true situ-
16 ation existing in the Orient. To argue whether or not
17 one nation was right or wrong in its contention is im-
18 material and unnecessary. The true value of the evidence
19 is to show only that there was a legitimate issue exist-
20 ing between Japan and the Western Powers -- a problem
21 which could give rise, whether through nationalistic
22 thinking or not, to the conclusion that Japan was being
23 threatened. If there was then a legitimate basis for
24 such a concept on the part of the government leaders of
25 this defeated power the element of aggression is

1 dissipated in the wake of solid international utterances
2 of all powers that a nation has the right to decide for
3 itself when it is placed in jeopardy. With this thought
4 in mind we proceed to point out for the benefit of the
5 Tribunal Allied economic action against Japan. And we
6 will not rest our case alone with the showing of fact on
7 this subject matter but shall go further and reveal the
8 military concerted action that was likewise taken.

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1 11. Though Japan did not so elect, it had
2 a right to determine that the economic blockade amounted
3 to an act of war against it. Nevertheless with
4 characteristic patience it tried to settle the differences
5 amicably but the increased economic blockade coupled
6 with the military encirclement threat finally convinced
7 Japan that as a last resort she had to go to war for
8 her own self preservation and self defense. It is to
9 the eternal credit of Japan that she did not immediately
10 interpret these economic acts of the Allied nations
11 as tantamount to a declaration of war but perseveringly
12 pursued the path of attempted peace through negotiations.
13 Moreover it must be borne in mind that during this
14 period the Allied Nations were not militarily asleep or
15 inactive but to the contrary were pursuing a path which
16 could hardly be accepted as lawful acts of a neutral
17 country. These acts were recognized by Japan as
18 definitely hostile and she reacted to them. It should
19 forever be borne in mind that Japan was not interfering
20 with events in the Western Hemisphere and particularly
21 things American but had concerned itself for many
22 years with the problems of the Orient. It was the Western
23 Powers who had forced their intervention into the
24 other side of the globe.
25

12. The prosecution in its opening statement

1 in discussing what is an aggressive war set forth a
2 definition of aggression as "a first or unprovoked
3 attack or act of hostility; the first act of injury
4 or first act leading to a war or a controversy; an
5 assault; also, the practice of attack or encroachment;
6 as a war of aggression.

7 13. "A nation that refuses to arbitrate or
8 to accept an arbitration ward, or any other peaceful
9 method, in the settlement of dispute but threatens to
10 use force or to resort to war."

11 14. The facts adduced in this trial definitely
12 establish that within the prosecution's own definition
13 the Pacific War was not a war of aggression by Japan.
14 It was a war of self defense and self preservation,
15 resulting from unjustified provocation.

16 JAPAN'S ECONOMY WAS NOT PLANNED OR DEVELOPED
17 FOR WAR

18 15. Before arriving at a decision in this
19 case, we suggest consideration be given to the fact
20 that for many centuries Japan had been a peace loving
21 nation. The Japanese people had been content with their
22 own civilization, their ages of high culture and their
23 reverence for the virtues and traditions handed down
24 from time immemorial. They were satisfied to such an
25 extent that they had closed their ports, shut themselves

1 away from outsiders and blissfully enjoyed the frugality
2 from the resources of their own islands. Their troubles
3 did not commence until the Western Powers with their
4 so-called civilization including a long history of
5 wars and conquest by force, opened its doors and brought
6 to its shores trade, commerce and contacts with the
7 outside world. Colonization by force and imperialism
8 was in full swing. It is not passing strange that
9 after being compelled to emerge from its long retirement
10 Japan found itself embroiled in world affairs, intrigues
11 and wars. It became awakened to new interests in
12 life. Its population increased rapidly and its home
13 resources were not sufficient to support its people.
14 The Tribunal is well aware of the fact that only a
15 small portion of the land in Japan is arable and on
16 slopes which make agriculture extremely difficult.
17 It was soon recognized that the arable land available
18 was not sufficient to support its people and particularly
19 as the population had been increasing by almost a
20 million babies each year. Prosecution's interpretation
21 of Exhibit 865 (GG 24) was dispelled by the testimony
22 of OBATA.^a The primary purpose of the population
23 policy was one of health and not pronounced until 1941.
24
25 16. The Government attempted to increase
15. a. T. 29,151-29,152.

1 the food supply by expanding the area of available
2 arable land and rotation of crops and some success
3 was achieved. Further success was obtained by
4 encouraging agricultural development in Korea and
5 Formosa. Emigration was encouraged but proved a
6 failure due to the various bars erected by many of
7 the Western Powers. Faced with an economy of scarcity
8 it would have been criminal on the part of the Japanese
9 Government to sit idly by and do nothing.

10 17. The evidence shows that the only policy
11 left for Japan to adopt was domestic industrialization
12 and foreign trade. Taking her cue from the Western
13 Powers, Japan ascertained how industries could be
14 developed. She learned how to reproduce machinery
15 and even to improve on it in some ways. She learned
16 how to build steam ships. She developed electric power
17 and established a transportation system. Being an
18 island nation with a scarcity of raw materials she
19 found it necessary to support her civilian economy to
20 import materials from many regions for manufacture and
21 use in Japan as well as the exportation of finished
22 products. The latter step was necessary in order to
23 obtain foreign exchange to pay for vital imports. The
24 ability of the Japanese industry to expand was
25 practically wholly dependent on foreign raw materials

1 which in turn was governed by the foreign exchange
2 situation which was always acute from 1925 to 1940.
3 Japan had to face the issue squarely of how to take
4 care of its teeming population since its own resources
5 were inadequate.

6 18. Because of these economic conditions
7 prevailing in Japan, her industries and trades, domestic
8 as well as overseas, could not be left entirely to
9 drift or continue in free competition. Governmental
10 control of industries and trades was not peculiar to
11 Japan. The 20th Century has witnessed a growing trend
12 in practically all the countries of the world toward
13 planned economy and government control of trades and
14 industries. The National Recovery Act in America,
15 commonly called the N.R.A., is a typical example. The
16 unusually large number of small industries and trades
17 in Japan made her particularly susceptible to the
18 need for government control. It was necessary that
19 some form or extent of control be exercised in order
20 that Japan could overcome her economic difficulties
21 at home and abroad and to develop her industries and
22 trades. Moreover the evidence shows that the conditions
23 which most frequently and strongly urged her to adopt
24 control measures were those of foreign markets and
25 the balance of foreign exchange. Japan's economy,

1 chiefly depending on export and import for its
2 existencé was being fatally affected by the policies
3 of foreign countries and it was necessary that she
4 take measures to adjust and regulate her industries
5 and trades.

6 19. The defense contends that the prosecution
7 has failed to sustain its burden of proof that beyond
8 a reasonable doubt Japan's economy was geared for
9 aggressive war. On the contrary a resume of the
10 competent evidence discloses it was a normal develop-
11 ment, except for a modest diversion for the necessities
12 of the China Incident and designed to aid the civilian
13 population. The evidence about to be reviewed also
14 definitely establishes that by means of the economic
15 blockade and military encirclement Japan was forced
16 to act.
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20. Government control of industries had been undertaken in Japan many years prior to 1928, the inception of the alleged conspiracy. Apparently the prosecution relies on HIROTA's pronouncement of August 7, 1936 as establishing a governmental policy for economic development for the purpose of preparing for war.^a This document on which the prosecution relies specifically states that Japan's position with respect to East Asia was to be accomplished "by dint of diplomatic policy and national defense." The prosecution interprets the words "national defense" as used in this document to mean war. If this interpretation is correct, then every nation in the world (and there are many who have appropriated money and backed policies for national defense) would be equally guilty of "beguiling the peace." In the paragraphs of this document not read by the prosecution, it is crystal clear that a policy was adopted for securing peace in East Asia and contributing to the well being of the whole world and that Japan should be built up inwardly. It must be borne in mind that at this time Japan had withdrawn from the League of Nations and the world situation as it then

20.

a. Fl. - Ex. 216, T. 2727-2728.

1 existed made it necessary for Japan to adopt a
2 progressive policy for her own well being. Certainly
3 the adoption of a policy to contribute to the peace
4 of the world cannot be condemned.

5 21. Apparently the prosecution contends
6 that this document marked the beginning of a conspir-
7 acy of economic preparations for war. If this be
8 true, no explanation is offered of Japan's previous
9 laws tending towards control of industries and com-
10 merce. Furthermore, if it be true, the prosecution's
11 theory that it was for war must fall because it con-
12 tends that the Army caused the fall of the HIROTA
13 Cabinet. It is generally recognized that cabinets
14 rise and fall as a result of differences of opinion
15 as to their fundamental policies. The prosecution
16 accepts the testimony of TSUGITA that the responsibil-
17 ity for the fall of the HIROTA Cabinet rested on the
18 Army and that the War Minister finally resigned and
19 HIROTA could no longer maintain his Cabinet.^a It
20 also adopts the Home Ministry report that "the Army
21 authorities stated that they could not do business
22 with a party whose policy for administrative reform
23 was opposed to the policy demanded by the Japanese
24
25 21.

a. FF-1.

people for the existence and expansion of Japan as a
stabilizing power of East Asia -- the abandonment of
which would cramp Japan into her islands and prevent
her from accomplishing her mission."b. The conclusion
from the prosecution's review of the facts with regard
to the resignation of the War Minister is irresistible
that the Army disagreed with HIROTA's policy. When
the HIROTA Cabinet fell its governmental policy fell
with it. In its argument that the economic conspiracy
continued, the prosecution claims that on February 20,
1937 the HAYASHI Cabinet, although made up of different
personnel, continued the policy of the HIROTA
Cabinet. That this conclusion is baseless is demonstrated
by the fact that the prosecution fails to cite any
evidence in support thereof. It is merely content to
cite exhibit 218 which wholly refers to a third
administrative policy towards North China unrelated
to HIROTA's policy. In the absence of any evidence,
it cannot be assumed that the HAYASHI Cabinet or any
of its successors concurred in the HIROTA policy.
All these cabinets rose and fell because of differences
of fundamental policies. Thus,

21.

b. E-25.

c. E-28.

1 the prosecution's basic claim that the various plans
2 later adopted stemmed from the HIROTA policy of 1936
3 is not supported by the evidence.

4 22. Since the prosecution has elected to
5 accept the date of August 7, 1936 as the commencement
6 of an alleged conspiracy for economic preparation
7 for war, there can be no claim that the following
8 pronouncements and bills which were adopted by the
9 Japanese Government prior to 1936 were designed for
10 such purposes although some of them are referred to
11 by the prosecution. Furthermore, they show that
12 they were not so designed. They are reviewed here
13 to show the background and basic trend of Japan's
14 economy.

15 23. On January 31, 1930 State Minister
16 FAMAGUCHI told the Diet that the country's efforts
17 should be directed in the promotion of industries
18 and development of trade, and for that reason the
19 gold embargo had been lifted the previous November.^{a.}
20 His resume of Japan's economics can be searched in
21 vain for any indication that it was the government's
22 policy to prepare for any war. It was about this
23 time when the depression and unemployment was plaguing
24

25 23.
a. T. 24950-24958.

1 Japan. Minister TAWARA on April 27, 1930 dealt
 2 with the remedies against these conditions.^{b.} He
 3 spoke of the necessity of restricting imports, pro-
 4 moting exports and urged greater production in Japan
 5 to overcome these difficulties so as to help the
 6 Japanese civilian economy. He urged the development
 7 of new markets in other parts of the world and en-
 8 couraged exportation of commodities. Mention was
 9 made by him of the weaknesses of wasteful competition
 10 and he argued for coordination and industrial develop-
 11 ment. His speech was a typical one which could be
 12 similarly expected of statesmen in any country speaking
 13 before a national legislative body. The next month
 14 the Shipping Guild Bill was adopted which dealt with
 15 the welfare of the shipping industry and the rational-
 16 ization of shipping circles.^{c.}

17 24. The next year on February 28, 1931 the
 18 Major Industries Control Bill was introduced in the
 19 House of Representatives. This bill was devised for
 20 the purpose of stabilization of those industries and
 21 its purpose was alien to any thought of war.^{a.}

22 25. After 1931 the economic depression
 23 centering in the rural communities reached its depth

24 23. b. Ex. 2771-B,
 25 T. 24959-63.
 c. T. 24966.

24. a. Ex. 2772-A, T. 24968.

1 and the social and political insecurities became
2 aggravated during the Cabinets of WAKATSUKI, INUKAI,
3 SAITO and OKADA.^a In order to assist Japan's
4 internal economy and defeat this depression, the
5 Capital Flight Prevention Bill was introduced in the
6 Diet on June 4, 1932.^b This bill was designed to
7 prevent the flow of Japanese capital overseas. As a
8 result of the anticipation of the fall in the value of
9 the yen, it was in no way related to either preparation
10 for or waging of war. The Japanese foreign exchange
11 rate was gradually declining. Speculative dealings
12 in exchange businesses were occurring and in order
13 to control this situation the Foreign Exchange Control
14 Bill was introduced in the Diet on February 16, 1933.^c
15 The evidence shows that most countries in the world
16 were practicing exchange control at that time. Was it
17 therefore wrong for Japan to exercise control over
18 all phases of foreign exchange?
19

20 26. It was recognized that Japan's iron
21 manufacturing industry was seriously affected by
22 imported goods and it was difficult to supply steel
23 at a low price to meet an ever-increasing demand.

24 25.

- 25 a. UEMURA - T. 25202.
b. Ex. 2773-A, T. 24970-24971.
c. Ex. 2774-A, T. 24972-24974.

1 Consequently, the bill to establish the Iron
2 Manufacturing Company was introduced in the Diet on
3 February 28, 1933.^{a.} It was felt at that time that
4 with the assistance of special funds from the govern-
5 ment, a rationalization of the industry could be
6 planned and low cost of production promoted and the
7 industry would thereby be placed on a stable basis.
8 Here, too, there was no thought or mention of planned
9 aggression.

10 27. Four months later in June 1933 the
11 London International Economic Conference ended in
12 failure. Perhaps if it had been successful, the
13 economic disturbances in the world and hostilities
14 which followed might have been avoided. As a result
15 of the failure of the London Conference, it was recog-
16 nized by Minister TAKAHASHI on January 24, 1934 in a
17 speech to the Diet that the overcoming of the depres-
18 sion by international cooperation became impossible
19 and that it was becoming the policy of all of the
20 powers to strengthen their self-protection policies
21 and carry out self-sufficiency principles of national
22 economy at home.^{a.} Perhaps he had in mind such

23 26.

24 a. Ex. 2774-B, T. 24976.

25 27.

a. Ex. 2776, T. 24996.

1 policies as the Ottawa Conference of 1932.

2 28. On March 10, 1934, again apparently
3 referring to the failure of the London Economic
4 Conference, Mr. TAKAHASHI stated, on the introduction
5 of the Adjustment of Trade and Protection of Commerce
6 Bill in the Diet, that there was no sincerity for
7 international cooperation in world commerce and that
8 there was a marked tendency among the countries to
9 adopt selfish policies.^a He significantly pointed
10 out that other countries were gradually building a wall
11 against Japan's export trade by such methods as re-
12 stricting their imports from Japan. In order to over-
13 come this, he stated it was the intention of the
14 Japanese Government to establish a system of regulating
15 trade and obtaining a balance of international incom-
16 ings and outgoings; of regulating the import duty and
17 protecting Japan's commerce by prohibiting and con-
18 trolling imports and exports. He also pointed out
19 that in view of the then current situation, it was
20 unavoidable for Japan to make temporary arrangements.
21

22 29. On May 11, 1936 the Automobile Industry
23 Control Bill was introduced in the Diet because, as
24 explained at that time, the industry was not on a
25 28.

a. Ex. 2777-B, T. 25000-25002.

1 firm foundation and the situation at home and abroad
2 necessitated a bill for the production of automobiles
3 for the general people. At that time the automobile
4 industry in Japan was in its infant stage and the
5 automobiles it had were supplied by foreign countries
6 and assembled in Japan.^{a.} With respect to the motor
7 vehicle industry, the prosecution is content to quote
8 from the plans but fails to cite any evidence about
9 the production of one single automobile, one tank,
10 one locomotive or one freight car, pursuant to those
11 plans or that Japan even had the facility for such
12 manufacture of these.^{b.}

13 30. The figures cited by the prosecution and
14 incidentally the source thereof not disclosed by
15 Liebert^{a.} of the expansion of Japan's aircraft
16 industry for the purpose of dominating and controlling
17 the world are to say the least ridiculously low. It
18 states "The undisputed statistics show that from 1935
19 to 1941 army aircraft bodies increased from 349 to
20 3,787, navy aircraft bodies from 408 to 2,080, and
21 total military aircraft from 584 to 11,654."^{b.} Need
22

23 29.

24 a. Ex. 2778-A, T. 25002, 25004.

b. F-19, 20.

25 30.

a. T. 8380, 8381.

b. F-21.

1 we do more than to point to the plan of the United
2 States^{c.} of January 1940 to turn out at least 50,000
3 military and naval planes per year which plan as we
4 know was consummated and almost doubled.

5 31. An examination of Japan's financial
6 situation up to 1936 discloses that in 1931 expendi-
7 tures were reduced by ¥338,000,000. This policy was
8 adopted to reduce prices of commodities to cope with
9 the depression and to balance Japan's foreign trade.
10 When Great Britain went off the gold standard in
11 September 1931, it became clear that Japan could no
12 longer continue its deflation policy. In December
13 of that year Japan suspended the gold standard. After
14 1932 she entered into a reflation policy by increasing
15 financial expenditures and encouraged the demand for
16 goods and labor. Because of this, the prices of
17 commodities rose and business conditions improved.
18 The export of Japanese goods was made easier. Expendi-
19 tures of the government started to increase after the
20 1932 fiscal year. Since 1933 and up to 1936 there was
21 hardly any increase and some decrease occurred in
22 1934 and 1935. The financial expansion during the
23 eight years from 1920 to 1928 of ¥455,000,000 was
24 30.
25 c. T. 25470.

1 almost equal to the ¥467,000,000 for the eight years
2 from 1928 to 1936.^{a.}
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31.
a. T. 25421 - 25428.

32. The financial policy of Japan, its plans for increasing taxation, inflation of currency and high prices was explained to the House of Representatives by SAKURAUCHI on January 21, 1937. He pointed out that prices had increased 32% since 1931 while wages increased only 15% and that if prices went higher the life of the people in Japan would be menaced. He deplored the precedents of Russia and Germany.^{a.} On the same day Minister of State BABA pointed out that the government had revised its decree based on the Foreign Exchange Act in view of the increase in speculative importations and that temporary emergency measures had been taken.^{b.}

33. That national economic selfishness is a curse was recognized on February 15, 1937 when Mr. YUKI discussed the development of foreign trade. He pointed out the necessity of a prudent policy with regard to exchange rates and that international economy was being frustrated by the ideology of economic nationalism. He claimed it would alleviate the situation of international relations and contribute to world peace to break the deadlock of international economy.^{a.} One week later, he also introduced the Bill Concerning Export Control Tax Law, at which time

32. a. Ex. 2779, T. 25,005 - 25,009. b. Ex. 2780-A, T. 25,008 - 25,009.

33. a. Ex. 2780-B, T. 25,009 - 25,011.

1 he stated various countries were taking measures such
2 as raising customs duties and limiting imports, and
3 that they were "being taken especially against Japan-
4 ese exports." As a result he believed it absolute-
5 ly necessary to enlarge the export compensation system
6 by establishing a new import compensation system.^{b.}

7 34. In striving to better Japan's civilian
8 economy it was necessary to adopt hand in hand with
9 the foregoing measures a program with respect to her
10 shipping industry, because she was an island nation.
11 The United States Department of State reports that
12 during the 1920's Japan's shipbuilding industry entered
13 a long period of depression when ship construction
14 dropped to 42,000 gross tons in 1927. In 1929 the
15 government framed a program for the assistance of ship-
16 building in the form of loans on easy terms, but owing
17 to the world economic depression which followed, little
18 use was made of this facility.^{a.} The report further
19 shows that in 1932 the government introduced the first
20 three Scrap and Build Plans. The first plan resulted
21 in the scrapping of 94 vessels of approximately 400,000
22 gross tons and the building of 31 new vessels of about
23 200,000 gross tons. The cost was approximately
24

25 33. b. Ex. 2780-C, T. 25,011, 25,012
34. a. Ex. 2768, T. 24,910

Y55,000,000, of which the government's subsidy was only Y11,000,000. The second and third plans in 1935 and 1936 were on a smaller scale, their combined result being the scrapping of 100,000 gross tons and the construction of only 17 vessels of about 100,000 gross tons. The three plans resulted in the scrapping of 500,000 gross tons and the construction of 48 new ships of 300,000 gross tons.^{b.} The cost of these three improvement plans to the government amounted to only \$4,000,000, which we submit is a mere drop in the bucket for any country accused of developing a shipping program for the purpose of engaging in aggressive war.

35. The report further shows that a further plan came into operation in April 1937 for the building of passenger and passenger cargo liners. Before the outbreak of the China Incident the trend of shipbuilding was for the construction of luxury liners for deep-sea service, but after the China Incident, Japan's policy was reversed from large-sized vessels for deep-sea service to small and medium-sized bottoms for coastal trade.^{a.} We submit that this is a definite indication that Japan's shipbuilding industry was not

34. b. Ex. 2768, T. 24,911, 24,912.

35. a. Ex. 2768, T. 24,912, 24,915

1 designed for preparation for the China War nor for the
2 Pacific War. As an island nation, if she had been
3 planning an aggressive war, her first thought would
4 have been directed towards adequate deep-sea shipping
5 facilities, and in so far as volume is concerned, if
6 she had been preparing to conquer the world, it hardly
7 seems necessary to mention the infinitesimal number
8 of ships Japan built and was building when compared
9 to the combined powerful marine fleets of the United
10 States, Great Britain and their allies. Would she
11 scrap any ships if she was preparing for war? The
12 report further shows that a great majority of the
13 ships built were of a very small tonnage. Many of her
14 vessels were made of wood.^{b.}

15 36. Although the prosecution introduced
16 evidence on Japan's marine shipbuilding activities, it
17 probably realized that it had failed to prove a most
18 vital point, as its evidence showed that Japan, as an
19 island nation, was not preparing for aggressive war,
20 because it had not developed a merchant marine. It
21 changed its position and tried to forestall a presen-
22 tation of the true facts regarding shipbuilding by
23 stating, when the defense was introducing evidence,
24

25 35. b. Ex. 2768, T. 24,915, 24,929

1 "It is not the claim of the prosecution that the control
2 of shipping was for the purposes of war."^{a.} Neverthe-
3 less it has again changed its position because it
4 deals with the subject in its summation.^{b.} It relies
5 on Liebert's testimony. Liebert did not disclose
6 the document from which he obtained the information
7 set forth in his testimony with respect to shipbuild-
8 ing. Although the defense tried to obtain all the
9 documents from which Liebert culled out his testimony,
10 it did so in vain.^{c.} We were, however, able to find
11 the document on which Liebert based his shipbuilding
12 testimony. It is the United States Department of
13 State report which is summarized above.^{d.} An exam-
14 ination of that document clearly demonstrates that it
15 was the one from which Liebert got his information,
16 as the wording of his testimony is in some instances
17 practically identical with this report, and the con-
18 tinuity of both documents are the same. An examina-
19 tion of the United States Department of State report
20 demonstrates how inadequately Liebert summarized it.
21 It also shows that Liebert presented to the Tribunal a
22 one-sided picture of the shipping industry. He failed
23 to reveal to the Court the number of ships and their
24

25 36. a. T. 24,965.

b. F. 16.

c. T. 8305, 24,813, 28,819, 28,820, 28,821

d. Ex. 2768.

~~gross tonnage which was scrapped by the Japanese~~

1 Government. He confined his direct testimony to
2 stating only the number of new ships built. His
3 testimony was carefully worded to create an impression
4 that the new ships were built entirely by government
5 subsidies.^{e.} Whereas in truth and in fact, the
6 government only subsidized the program to the extent
7 of approximately one-fifth of the total cost. In
8 view of the above, it is difficult to understand the
9 prosecution's claim that the defense does not challenge
10 Liebert's testimony with respect to shipbuilding.^{f.}

11 It is no wonder that the prosecution admitted it was
12 on the horns of a dilemma when the defense produced
13 the United States Department of State report, which
14 it then admitted was used by Liebert.^{g.}

15
16 37. The prosecution also states "the defense
17 denies that any portion of the increase in shipbuild-
18 ing from 402,000 tons in 1938 to 605,000 tons in 1940
19 was for war purposes."^{a.} It does not reveal the evi-
20 dence supporting such an increase. Apparently the
21 prosecution took these figures from a plan which was
22 adopted in 1939 and assumed that that amount was
23 actually constructed. This plan was referred to by

24 36. e. T. 8,318, 8,322 37. a. F 16.

25 f. F 16

g. T. 24,903

1 Liebert. Even if the planned increase to 605,000
 2 tons had been accomplished, it would have been ridicu-
 3 lously low for a country bent on dominating lands
 4 beyond the Pacific. The defense introduced the total
 5 tonnage of vessels launched from 1934 - 1940.^{b.} The
 6 shipbuilding laws which Japan passed in 1939 show
 7 no planning for any aggressive war.^{c.} Even in 1941
 8 there was a woeful lack of sufficient shipping to
 9 carry on any protracted war. Documents written
 10 January 1, 1941, substantiate this.^{d.}

11 38. The United States Department of State
 12 report further states "For several months after the
 13 outbreak of the China Incident (7 July 1937), it is
 14 true, the Japanese economy remained ostensible on a
 15 peacetime basis in practically all its aspects; war-
 16 time control measures were adopted only when strategic
 17 needs created urgent requirements."^{a.} It also pointed
 18 out that even before the war, it was obvious that Japan
 19 could not develop a "war economy" and at the same time
 20 trade in manufactured goods in keeping with her
 21 policies.

22 39. In support of its claim that Japan was
 23 preparing economically for war, the prosecution relies
 24 heavily on Exhibit 841 and 842. Exhibit 841 is an
 25

37. b. T. 24,919

c. T. 24,919, 24,932

d. T. 24,890, 24,895

38. a. Ex. 2797, T. 25,093

outline for a five-year plan for production of war
materials of the War Office dated June 23, 1937.

We need not concern ourselves with this, because 14
days later upon the sudden outbreak of the China
Incident, "it died a natural death" as testified to
by OKADA.^{a.}

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40. Prosecution exhibit No. 842 is divided
1 into three parts:

2 I. Summary of Five-Year Program of Important
3 Industries Prepared by War Ministry, dated 29 May 1937.

4 II. Resume of Policy Relating to Execution of
5 Essential of Five-Year Program of Important Industries.
6 (Trial Draft Prepared by Army, dated 10 June 1937.)

7 III. Summary of Program for Extension of
8 Productive Capacity. (Prepared by Planning Board,
9 dated January 1939.)
10

11 There is no evidence that Part I or Part II were
12 approved by the Cabinet and the prosecution does not
13 claim that they, as such, were adopted. If Parts I and
14 II of Exhibit 842 were incorporated in Exhibit 841,
15 (prosecution calls this Plan III) then the undisputed
16 testimony is that they all "died a natural death," at
17 the outbreak of the China Incident. The evidence is,
18 and the prosecution admits, that Part III of Exhibit
19 842 was not adopted by the cabinet until January 1939^a.
20 Therefore, it is quite apparent that this plan was not
21 put into effect and designed for the purpose of prepar-
22 ation for the China Incident of 1937. The outbreak of
23 the Incident necessitated the organization of a makeshift
24 plan in 1938 which had no relation whatsoever to the
25

40. a. F 9

1 plan set forth in Exhibit 842.^b The prosecution asks,
2 if these plans were defensive, "against what nation did
3 Japan think it necessary to execute defensive prepara-
4 tion?" The prosecution then answered the question by
5 admitting that OKADA testified that the plan was
6 prompted by fear of Russia.^c OKADA pointed out that
7 because many of Japan's important industries depended
8 heavily on the importation of materials from abroad,
9 the economics of Japan were very shaky, and as they
10 were not independent there was a great tension. Further-
11 more, at that time the world divided up into economic
12 blocs and Japan believed it was necessary at that time
13 to develop every industry so that she could continue
14 as a modern state and provide for the welfare of her
15 people.^d OKADA fully explained that development
16 by the U.S.S.R. of its industries was extremely
17 startling. After Russia had completed its first and
18 second five-year plans, Japan believed that the Soviet
19 was about ready to begin a third five-year plan.^e The
20 prosecution has failed to show any evidence that the
21 reason for the adoption of the plan was otherwise than
22

23 40. b. T. 18,318

c. F 7.

24 d. T. 18,276

e. T. 18,274

1 as testified to by OKADA. That plans one and two drafted
2 in 1937 were prepared for the purpose of commencement
3 of a war in 1941 would have required clairvoyance on
4 the part of Japan, considering the momentous world
5 events which occurred during that period of time over
6 many of which Japan had absolutely no control. Further-
7 more, it is difficult to understand the prosecution's
8 mathematics that a four-year plan adopted in 1939 would
9 be completed in the same year as a five-year plan
10 adopted in 1937 if the latter had been accepted.^f

11 41. We submit that all the evidence points to
12 a clear conclusion that all the laws pertaining to
13 economics passed prior to 1937 had no relation to
14 aggressive war, nor to the plans I and II of 1937
15 which were admittedly never adopted. Furthermore, the
16 laws passed after 1937 had no relation to either Plans
17 I or II, and certainly those passed up to 1939 had no
18 relation to Plan III, which was not adopted until 1939.
19 Even if they were related, the prosecution's argument
20 is difficult to follow. It assumes that all the
21 plans were for aggressive war.^a It then states, in
22 substance, that considering all of Japan's conduct prior
23 to 1937, its aggressive action between 1937 and 1939,
24

25 40. f. F 9
41. a. F 5; F 6

and planning and waging of aggressive war after 1939,
 the only conclusion is that the plans were for aggressive war. Such reasoning, we submit, is illogical. The prosecution assumes a conclusion, and to support it, assumes other conclusions, upon all of which it has the burden of proving the facts, and which burden it fails to sustain.

42. The Iron and Steel Industry Bill of July 29, 1937 was proposed because of the dependence of these industries on foreign countries. Mr. YOSHINO stated at the time the bill was introduced that self-sufficiency, including the development of further overseas markets for iron and steel products, was necessary.^a

43. The bills introduced in the Diet in the latter part of 1937 were primarily designed for self-sufficiency and many of them were adopted because of measures being taken by foreign countries to prevent Japanese goods from being imported. Some of these laws as enacted were to be abolished one year after the China Incident terminated. Included were the Bill Concerning Adjustment of Foreign Trade of August 2nd, 1937;^a the Gold Production Law of August 5th, 1937;^b the Temporary

41. b. F 6
 42. a. Ex. 2781-A, T. 25,013, 25,015
 43. a. Ex. 2783, T. 25,027 - 25,033
 b. Ex. 2784, T. 25,034, 25,038

Law Controlling Shipping of September 10th, 1937;^c the
 Temporary Capital Funds Adjustment Law of September,
 1937;^d the Temporary Measures Concerning Exports and
 Imports of September 10th, 1937;^e and the Law Providing
 for Emergency Trading in Rice effective December 1st,
 1937.^f UEMURA testified that after the China Incident
 had broken out the public felt uneasy about the prospect
 of importing cotton. The Government felt the necessity
 of establishing synthetic plans and although the
 Planning Board was established in 1937 the Commodities
 Mobilization Plan was very rough and it was not until
 1938 that it took on definite shape.^g

43. c. Ex. 2786, T. 25,041, 25,044;
 Ex. 2790, T. 25,053.
 d. Ex. 2768, T. 25,091, 25,100
 e. Ex. 2791, T. 25,054.
 f. Ex. 2787, T. 25,044, 25,045
 g. Ex. 2802, T. 25,107, 25,215

1 44. The prosecution under the heading of
2 Expansion of War Industries first mentions the forma-
3 tion of Japan's Electric Generation and Transmission
4 Company, citing Liebert's testimony.^a Liebert does
5 not disclose the source of his conclusion to the ef-
6 fect that this company had as one of its objectives
7 the increase of Japanese electric power resources and
8 development to meet military requirements. On numer-
9 ous occasions the Tribunal has stated the Liebert's
10 opinions and conclusions would be disregarded. The
11 defense were not permitted to examine OWATA on this
12 conclusion for the above reasons.^b Yet the prosecution
13 uses Liebert's opinions in its summation.

14 45. The reason for the adoption of the Bill
15 for State Control of Electric Power was explained to
16 the Diet on January 26th, 1938. It was pointed out by
17 NAGAI that electricity was not only indispensable to
18 national life for lighting and heating purposes but
19 also played a part as motive power for all industries
20 and to provide against war as well as for peaceful
21 purposes.^a

22 44.

a. F 10.

b. T. 18,255, 18,256

24 45.

a. Ex. 2792-A, T. 25,055, 25,058

46. These purposes were fully explained by
1 OWATA. The development of water power in Japan had
2 been in a piecemeal sort of a way and it was necessary
3 to develop waterpower on a large scale to avoid waste
4 of waterpower. The production of electric power in the
5 East was large but in the West it was scarce. The
6 joining of the generating stations in East and West
7 by power lines did result in economizing on coal and
8 the eliminating of the generation of electricity by
9 coal. Furthermore the electric power industry had a
10 tendency to concentrate around large cities and it
11 was necessary to devise some means to send power into
12 the agricultural districts. In addition it would be
13 possible to send electrical power to large scale
14 industries and for lower cost. It also seems unneces-
15 sary to point out that the bill for state control of
16 electric power had been adopted prior to the approval
17 in January 1939 of Plan III^a and could under no cir-
18 cumstances be considered as carrying out the latter
19 plan. It is quite apparent, because of the absence
20 of any date of publication of the figures quoted by
21 Liebert^b and of the absence of any date on the graph
22 he submitted,^c that these figures and charts were
23
24

25 46. a. Ex. 842

b. T. 8282, Liebert's Aff., p. 6.

c. Ex. 843

1 drawn under Liebert's direction and the classification
 2 of basic war industries and war supported industries
 3 is his personal classification. If these were figures
 4 and charts of the Ministry of Commerce and Industry
 5 it nowhere appears on what date they were published
 6 or prepared. Thus based on Liebert's own classifica-
 7 tions of what is a basic war or war supported indus-
 8 try he and the prosecution asked the Tribunal to draw
 9 conclusions that the large increase of electric power
 10 was consumed by war and war-supported industries and
 11 that there was no change in consumption by civilian
 12 companies, utilities, and civilian uses. In the ab-
 13 sence of any evidence as to what constituted basic
 14 war and war industries it is submitted that Liebert's
 15 testimony and conclusions are valueless. In other
 16 words, we submit neither his figures^d nor the Chart^c
 17 are original documents but prepared at his suggestion.
 18

19 47. The prosecution also relies on the
 20 economic opinions of news reporter Goette regarding
 21 China.^a He was permitted to give his opinions and
 22 conclusions on economic matters over due and timely
 23 objections.^b In all fairness, considering the re-
 24 strictions placed on defense witnesses against

25 46. d. T. 3281, Liebert's Aff. p. 6

e. Ex. 843.

47. a. E 87. b. T. 3,866.

1 expressing opinions, all of Goette's opinions and
2 conclusions should be disregarded,

3 48. In discussing the machine tool industry
4 and the Precision Bearing Industry the prosecution
5 merely cites Plan 3 of January 1939, and concludes
6 that Japan imported enormous quantities of machine
7 tools basing this assertion on Liebert's dubious
8 charts and figures.^a Liebert's assertion that be-
9 tween 1937 and 1940 the Army purchased approximately
10 22½ million dollars worth of machine tools is un-
11 supported.^b With respect to his chart it is inter-
12 esting to note that although he quotes figures showing
13 production import and export, his graph fails to
14 portray the exports. Here again the Ministry of
15 Commerce and Industry and Machine Tool Association
16 figures are undated and apparently were prepared
17 from figures supplied by Liebert, the source of which
18 is unknown. For the same reason the chart and figures
19 with respect to the Precision Bearing Industry should
20 also be disregarded.^c The reason for the development
21 of the Machine Tool Industry Department in Japan was
22 well expressed when the bill was introduced in the
23 Diet on March 10, 1938.^d It was explained that the
24
25

48. a. F19. c. T. 8,357
b. T. 8,356 d. Ex. 2793, T. 25,063-25,065

1 industry had only recently been developed and there
2 were difficulties from the point of manufacturing
3 ability and techniques. The capacity for the manu-
4 facture of machine tools was consequently inferior
5 to those of foreign goods and in the past Japan had
6 to depend on import of machine tools and it was
7 thought proper that the management of the industry be
8 placed on a rational foundation.
9

10 THE PRESIDENT: Well, you have reached the
11 end of a lengthy paragraph. We will recess for
12 fifteen minutes.

13 (Whereupon, at 1045, a recess was
14 taken until 1100, after which the proceed-
15 ings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: It is necessary that the
4 summations should be served on the Judges two or three
5 days before they are read because in one case they
6 must be translated. I understand there is some delay
7 in serving the summation about to be read or to be
8 read after yours, Mr. Logan.

9 Mr. Logan.

10 MR. LOGAN: I shall continue on page 41,
11 paragraph 49.

12 49. On March 17th, 1938 Prince KONOYE spoke
13 on the introduction of the National Mobilization
14 Bill.^{a.} It finally became law in May 1938 which was
15 ten months after the China Incident had commenced. On
16 February 24, 1938, Mr. SAITO spoke in the Diet on the
17 necessity for the adoption of a national General Mobil-
18 ization Bill.^{b.} He pointed out that the China Incident
19 "had assumed serious proportions beyond our imagination,"
20 that Japan's policy of non-expansion and settlement on
21 the spot were incapable of fulfillment. He was unable
22 to foretell the future of the Incident but felt it
23 might be an extremely long way off. He emphasized
24 that the Incident was proving to be the source of all
25

(49. a. Ex. 2794, T. 25069, 25071.
b. Ex. 27920, T. 25061, 25063)

1 troubles, that Japan's future was beset by great dif-
2 ficulties and that her national defense should be
3 strengthened by enforcing a certain degree of control
4 over personnel, resources and materials. Prince KONOY
5 also pointed out that the bill was necessary to replen-
6 ish munitions of war and to render smooth all national
7 activities necessary for the prosecution of war. The
8 mechanics of the bill was to enable the government to
9 take such emergency measures consonant with the actual
10 demands of the situation. He pointed out that at that
11 time there was in existence the Munitions Industry
12 Mobilization Law of 1918. But the law was not adequate
13 in its scope and because of the China Incident the bill
14 was offered to supplement the deficiencies of that law.
15 He stated, "The contents of this bill are, on the whole,
16 based on matters provided for in the Munitions Industry
17 Mobilization Law and in the various provisional laws
18 relative to the China Incident." ^{c.} The Bill contains
19 special provisions for the creation of a Deliberation
20 Council. With respect to this latter provision the
21 United States Department of State reported that the
22 provisions of the bill in setting up a council nullified
23 its military function saying "However the decision to
24 set up a National Mobilization Council of fifty members
25 (49. c. T. 25068, 25071)

1 (largely from the two houses of the Diet) to review
 2 the measures applied under this statute tended to
 3 nullify its effectiveness as a weapon of the Military
 4 in the struggle for nationalized industries." The
 5 United States report also quoted a leading Japanese
 6 publication which stated, "On the whole even in 1940-
 7 1941 Japan's economy was financed and operated by
 8 private enterprise which disposed of profits and divi-
 9 dends with relatively slight government interference.
 10 Control in the sense of comprehensive state plans en-
 11 forced on industries was still in embryonic form."
 12 As a matter of fact, as testified to by UEMURA, Japan
 13 was backward in preparation for national mobilization
 14 as compared with other nations. In drafting the Nation-
 15 al Mobilization Law he stated that reference was made
 16 to Great Britain's Uniform National Defense Law of
 17 World War I and subsequent legislation such as the Italy
 18 and Czechoslovakia National Mobilization Law and the
 19 United States National Mobilization Bill Number 5539
 20 introduced in Congress in 1935 and then under consider-
 21 f.
 22 ation of the Upper House.

23 50. As explained by the witness UEMURA, who
 24 was not cross-examined by the prosecution, the reason
 25 (49. c. Ex. 2768, T. 25099
 c. Ex. 2768, T. 25100
 f. Ex. 2802, T. 25210, 25215)

1 why plan III was adopted in January 1939 was to aspire
2 to a well balanced development of the country's indus-
3 tries. Due to the China Incident the allocation of
4 materials for the expansion of the capacity productive
5 potential was not carried out as expected.

6 51. The prosecution has commented on the
7 establishment of the Heavy Industries in Japan, as ex-
8 plained in the United States Department of State report,
9 the reason for this was that if China and other nations
10 should become industrialized it was probable that light
11 industries would be established first, thereby reducing
12 Japan's exports and that Japanese industrial reorgan-
13 ization in favor of heavy industries should be carried
14 out as the only means of enabling Japan to continue as
15 an industrial nation. ^{a.} The Bill for Light Metals
16 Manufacturing Industries such as aluminum and magnesium
17 was introduced on March 17th, 1939. The reason for its
18 necessity was for national defense, domestic demand,
19 exportation in peace time and the securing of a balance
20 of supply and demand as well as just and fair prices. ^{b.}

21
22 52. In discussing production of light and
23 non-ferrous metals the prosecution contents itself with
24 the statement of planned increases and an assertion that
25 (50. a. T. 25209)
(51. a. T. 25091, 25100
b. Ex. 2795A, T. 25073, 25075)

1 the planned increases were not realized. Apparently
 2 by ignoring it, it considers Liebert's testimony un-
 3 important. We concur in this in view of Liebert's
 4 admission on cross-examination that he obtained his
 5 facts and figures with respect to raw materials from
 6 the Japanese Government, control associations, trade
 7 statistics of the United States Government, publications
 8 of the United States Government, and other sources, it
 9 must be assumed that the figures Liebert chose were
 10 designed to fit the need and since he is not an expert
 11 his conclusions are not reliable.^{a.}

12 53. In support of its claim that the iron
 13 and steel industry was geared for war purposes, the
 14 prosecution relies on Liebert's conclusions unsupported
 15 by facts. Here we find Liebert making such statements
 16 as "Inormous quantities of scrap iron were imported. . ."
 17 unsupported by any facts. He sets forth figures com-
 18 paring the years 1938 and 1941 for such items as steel,
 19 special steel, steel ingots, pig iron, iron ore;^{b.} but
 20 these were only the planned increases and not actual
 21 increases.^{c.} He sets forth subsidies supposed to be
 22 paid by the Ministry of Commerce and Industry.^{d.} There

24 (52. a. T. 8774, 8775)

25 (53. a. T. 8322-8336.

b. T. 8327

c. T. 8326

d. T. 8323-8324)

1 is no evidence as to the exact source of his figures.
2 Liebert's testimony purports to set forth tables show-
3 ing production and imports of iron ore;^{e.} production
4 and imports of pig iron;^{f.} production and imports of
5 steel scrap;^{g.} and steel production and imports for
6 the years 1926-1941.^{h.} The authenticity of these
7 figures and their exact source is not disclosed by
8 Liebert and pursuant to the Tribunal's ruling, we
9 assume they will be disregarded. Even if they are not
10 disregarded, an impartial review of them demonstrates
11 that the increase was normal and not excessive. For
12 example, Liebert admitted that his figures for steel
13 production and import as shown on prosecution exhibit
14 845 were prepared by draftsmen and employees of Economic
15 and Scientific Section of SCAP on the basis of informa-
16 tion supplied by Liebert.^{i.} He further admitted that
17 he had conferences with various associations and compared
18 their figures with other data from the United States
19 and Japan. Yet we find on the chart submitted, ex-
20 hibit 845, the notation, Source: Ministry of Commerce
21 and Industry, and it is undated. Thus it develops that
22 the figures represented in the graph did not wholly
23

24 (53. e. T. 8329-8330
25 f. T. 8331
g. T. 8332
h. T. 8333
i. T. 8665)

1 come from the Ministry of Commerce and Industry but
2 they are a conglomeration of figures from various sources
3 and all of which are entitled to absolutely no weight.

4 54. The Witness YOSHINO testified to the
5 background of the industry from 1868 to 1930. Prosecu-
6 tion's contention that ADACHI's testimony was given
7 without referring to any of the plans and is therefore
8 valueless is to say the least naive. His testimony was
9 based on facts and figures and dated charts found in
10 various governmental departments. In fact, there are
11 12 charts in evidence which were attached to his
12 affidavit.^{b.} Apparently the prosecution accepted
13 these facts and figures because they refused to cross-
14 examine him. An examination of ADACHI's testimony and
15 the charts attached to his affidavit demonstrate the
16 fallaciousness of prosecution's argument that the Iron
17 and Steel Industry of Japan was geared for aggressive
18 war. Chart 1 shows the market prices of bars and
19 plates. Chart 2 shows the steel consumption per capita
20 per annum of the various countries, showing that Japan's
21 consumption in 1931 equalled about one-seventh of the
22 United States of America. Chart 3 shows how Japan from
23 the years 1930-1940 was well back of Australia, Germany,
24 (54. a. T. 18211-18213
25 b. Ex. 2775, E. 24979, 24994)

1 United States, Russia, in ingot production and that
2 only England produced less than Japan. Chart 4 shows
3 the effect of the revision of tariffs on Japan's im-
4 ports. Chart 5 shows the increased production of pig
5 iron which it is submitted was a normal increase un-
6 related to any designs for aggressive war but as testi-
7 fied to by ADACHI, some of this production was necessary
8 for the military because of the China Incident. Chart 6
9 shows the production of finished steel which showed
10 a decline after 1938. Chart 7 shows the import of
11 iron ore which showed a sharp decrease from 1936 -
12 1938 and increase thereafter to 1941 when it again
13 dropped. The increase for the years 1938 - 1941, it is
14 submitted, were not excessive because of the China
15 Incident. Chart 8 shows the import of finished steel
16 and that except in the year 1937 the import of steel
17 material decreased from 1932 - 1942 with a small increase
18 in 1939. Chart 9 shows the percentage of increase of
19 export of finished steel rising sharply from 1932 -
20 1936 with a decrease until 1938 when the export of
21 finished steel increased again and decreased again
22 after 1939. The decrease in 1937 - 1938 of 410,000
23 tons was due to the China Affair. Chart 10, showing
24 the export of machines which means the export of trans-
25 formed steel material, was extremely large and increased

1 continuously from 1932 - 1939. This belies plans for
2 aggressive wars. Chart 11, showing the consumption of
3 finished steel, shows that it rose steadily to meet
4 promotion of civilian life in Japan and then had a
5 tendency during the period 1939 - 1941 to descend.
6 Chart 12 shows the planned consumption of finished steel
7 for military and civilian uses. The data contained
8 in this chart was presented in 1945 to the United
9 States Bombing Survey by the Iron and Steel Control
10 Association but was originally made by the government.
11 That there was no design for aggressive war insofar as
12 consumption of finished steel is concerned is shown by
13 this chart in that it was planned that civilian consump-
14 tion far exceed military consumption.

16 55. The necessity for the government's action
17 with respect to iron and steel was fully explained by
18 ADACHI. Japan was menaced by the import of iron and
19 steel from foreign countries and of the two hundred
20 manufacturers during the first World War one hundred
21 and fifty went into bankruptcy. In 1932 to 1940 the
22 increased production movement in Japan was no different
23 than in all countries after World War I. He cited
24 figures to sustain this contention. ^{b.} as collateral
25 (55. a. T. 24982, 24983
b. T. 24984)

1 security for the import of raw materials Japan was
2 forced to increase the amount of her exported steel and
3 machinery. Plans which were made by the Ministry of
4 Commerce and Industry in 1934 were made solely from the
5 standpoint of economy.^{c.} And in endeavoring to solve
6 the problem the amount for military and naval demands
7 was estimated at less than 10% of the whole which calcu-
8 lation was based upon the same demands of the Army and
9 Navy from 1896 to 1930. The plan was expected to come
10 to an end in 1938. Production of steel materials
11 reached its peak in 1938 a year after the outbreak of
12 the China Incident and thereafter decreased despite the
13 Incident. Consumption from 1932 to 1942 reached its
14 peak in 1939 and decreased thereafter. Imports reached
15 their peak in 1939.^{d.} The whole plan of the Ministry
16 of Commerce and Industry was civil economy and ADACHI
17 knew of no plan for promoting war. The large production
18 was planned out of necessity since Japan was turning
19 from a farming country to an industrial country as a
20 counter-measure to the increase in population and was
21 a contribution to the elevation of Japanese economic
22 life.
23
24

25 (55. c. T. 24986
d. T. 24989)

1 56. The production of steel material de-
2 creased with the development of the China Incident.^{a.}
3 It was greatly affected by the prohibition of the
4 import of scrap iron in 1940. The amount of iron
5 ore in Japan greatly decreased. Consumption of pig
6 iron increased progressively from 1935 to 1941. Con-
7 sumption of scrap iron increased progressively to 1939
8 when it commenced decreasing. The Army and Navy re-
9 quirements increased after the start of the China Inci-
10 dent which was only natural for a country at war. And
11 the supply for the people in 1941 was reduced to the
12 degree of about 1921.^{b.} The prosecution apparently ac-
13 cepted ADACHI's testimony in toto as it failed to
14 cross-examine him.

15 57. The prosecution also failed to cross-
16 examine the witness LASUMI who testified of the govern-
17 ment's efforts for many years to obtain sufficient food
18 and how a food shortage - particularly rice - existed
19 in 1939 because of the continued dry weather in Japan
20 and Korea. He related the efforts of the government to
21 moderate the condition of 1939 and 1940 by fixing the
22 price but increased consumption in Korea resulted in
23 an extreme shortage of food in Japan proper.^{c.}
24

25 (56. a. T. 24991
 b. T. 24994)
 (57. a. T. 25050-52)

1 58. On March 11th, 1940 the bill for Coal
2 Supply Law was introduced in the House of Representa-
3 tives.^a It was explained that because of the insuf-
4 ficient supply all fields of Japanese national life
5 were menaced and that Japan did not have sufficient
6 coal to supply power plants and other industries. The
7 object was to increase the output and develop new mines.
8 The quality of the coal produced in Japan was not of
9 high grade.

10 59. The prosecution contents itself with
11 stating in conclusion that the only object of the con-
12 trol and increase of coal "must necessarily have been
13 the assistance of war industries." This in utter dis-
14 regard of the fact that it admits that Japan relied
15 upon the importation of coking coal which is necessary
16 in industrial plants. Lacking evidence that the Japan-
17 ese normal economy did not require the measures adopted,
18 the prosecution itself concludes that the bills relating
19 to the coal industry were not reasonable from the
20 point of view of self-defense.

22 60. It was not until March 15, 1940 that
23 the bill relating to synthetic chemical industries
24 was introduced in the Diet.^a It was stated at that
25 time that these enterprises had only been recently

(58. a. Ex. 2796-A, T. 25076-8)

(60. a. Ex. 2796-B, T. 25078-82)

1 developed and that there was a lack of natural re-
2 sources. It was pointed out that the demand for in-
3 creased production was necessary after the outbreak
4 of the China Incident. The prosecution argument with
5 respect to the Japanese chemical industry is based on
6 two assumptions: (1) That the chemical industry plays
7 an important part in the manufacture of explosives and
8 war materials, and (2) That the chemical industries
9 underwent tremendous expansion during the years imme-
10 diately preceding 1941. We admit that the chemical
11 industry does play a certain part in the manufacturing
12 of explosives and war materials but submit that there
13 is no evidence in the case that the chemical industry
14 was developed for the purpose of preparing for war, nor
15 is there any competent evidence that the greater part
16 of it was similarly developed. It is well known that
17 the chemical industry plays an extremely important
18 part in normal civilian economy. We urge the Tribunal
19 to ignore the figures, conclusions, and opinions sub-
20 mitted by Liebert on Japan's chemical industry and de-
21 velopment. Admittedly, he is not an economist, and
22 on cross-examination he stated he examined hundreds of
23 documents, disregarding those which in his opinion he
24 considered inaccurate and he made a selection of only
25 ~~these documents which pointed out what he wished to~~

b.
1 show. A request was made while he was on the stand
2 on October 22, 1946 as to the source of his figures
3 with respect to the chemical industries and the defense
4 was never advised, as its request was parried by the

c.
5 prosecution. In other words, it is quite apparent
6 that Liebert started out to show that Japan was prepar-
7 ing for aggressive war and only accepted and presented
8 to this Tribunal figures which he selected and which
9 he thought showed this and he disregarded others. Such
10 an admission by the prosecution's chief economy witness
11 makes it imperative that his testimony be disregarded.
12 The Tribunal indicated that on the summation under such
13 circumstances a request that his figures be disregarded
14 would be entertained. Even if Liebert's figures were
15 true with respect to the chemical industry, they demon-
16 strate a normal growth of a newly developed industry.

17
18 61. Viewed from a financial standpoint, it is
19 impossible to arrive at a conclusion that Japan ever
20 prepared for aggressive war. The first turning point
21 of Japan's financial policy occurred after the outbreak
22 of the Manchurian Incident and this change had to be
23 made to meet the emergency conditions. a. Her operations
24 had to be met by public borrowing. The second turning

25 (60. b. T. 8777

c. T. 8305)

(61. a. Ex. 2769, T. 24935-9)

1 point in Japan's financial policy began with the Feb-
2 ruary 26, 1936 Incident. The third turning point began
3 after the commencement of the China Affair which in-
4 volved an increase of taxes and further public borrowing.^b
5 The fourth turning point occurred in January 1938.
6 From a financial standpoint, it is quite apparent that
7 none of these measures show any plans or preparations
8 for initiation of any aggressive wars.

9 62. The purpose of the Petroleum Control Bill
10 which was introduced in the Diet on March 4, 1936 was
11 explained by Mr. MATSUMOTO as being necessary due to
12 the then present situation of the oil refining industry
13 in Japan.^a He recognized that Japan had to rely on
14 foreign countries for more than half of her supply of
15 benzine and crude petroleum and that it therefore became
16 necessary to regulate imports and establish control of
17 the industry. Nowhere in his speech does it appear
18 that the purpose of the bill was otherwise than as
19 stated. This law was described by the witness YOSHINO
20 as being enacted to insure a six months' supply of oil
21 and there was no reason given that it was for military
22 purposes. On the contrary, it was for the use of domes-
23 tic industries. It also created competition between
24

25 (61. b. Ex. 2769, T. 24936)
(62. a. Ex. 2777-A, T. 24998-25000)

1 Russian, Netherlands, United States and British oil
2 companies, and the bill was based on the example of
3 French legislation. The costs for increasing the sup-
4 ply to six months were borne by the government. If
5 there had been any military purposes in connection with
6 the bill the costs would have been charged to Army and
7 Navy expenditures.^{b.}

8 63. The Synthetic Oil Industry Bill and the
9 Imperial Fuel Development Company Bill were introduced
10 on July 29, 1937. It was stated that Japan was very
11 poor in oil resources, that large sums of money were
12 being spent by Japan and the demand for oil was increas-
13 ing. Self-sufficiency was set forth as the object of
14 these bills.^{a.} OKADA testified that Japan was completely
15 lacking in storage of oil until the outbreak of the
16 China Incident. After it commenced American crude oil
17 was bought and a minimum of aviation oil was secured
18 for the Army. This was the first occasion of the Army's
19 storage of oil. At that time Japan, as a whole, was
20 woefully lacking in oil and the amount obtained was
21 barely sufficient to satisfy the needs of the Army's
22 air power for a year, even if civilian oil was added
23 to that of the Army.^{b.}

25 (62. b. T. 18215-17)

(63. a. Ex. 2781-A, T. 25013

b. T. 24855-6)

1 64. The prosecution refers to the planned
2 increase of the Petroleum Industry which it admits
3 was not adopted until 1939. Its argument that the
4 laws which were passed in 1934 and 1935 for the purpose
5 of carrying out the plan of 1939 is of course untenable.
6 It also comments on the fact that a rationing system
7 was effectuated to curtail civilian and government use
8 of oil in March 1938.^{a.} In view of the fact that hos-
9 tilities with China were in progress at that time this
10 curtailment was not unusual. As a matter of fact,
11 rationing was practiced by other countries even before
12 they got into the war.
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65. The impression that oil was required in Japan solely for the use of the army and navy was dissipated by the testimony of Mr. OKAZAKI whom the prosecution failed to cross-examine.^{a.} He testified that in 1931 the army and navy consumed 36,000 kilolitres of diesel oil while the civilian consumption was 1,240,000 kilolitres and that this proportion continued from that time up until the outbreak of the Pacific War. Civilian consumption in 1941 was 1,066,150 kilolitres. This drop in civilian consumption was also accounted for by the drop in importation from 1,346,000 kilolitres in 1940 to 465,000 kilolitres in 1941 because of the embargoes. With respect to fuel oil he pointed out that the volume of naval consumption increased after 1931. This was due to the fact that coal burning boilers on vessels were gradually changed to fuel oil burning boilers. The annual consumption of fuel oil in 1941 was 1,367,360 kilos.

66. It is interesting to note that although Liebert freely expressed opinions and conclusions with respect to many industries he voluntarily stated on direct examination that there was tremendous stockpiling of reserve oil for some purpose or

65. a. Ex. 2782, T. 25020.

in "Peace and War": "Practically all realistic

1 authorities have been agreed that imposition of sub-
2 stantial economic sanctions or embargoes against any
3 strong country unless that imposition be backed by a
4 show of superior force, involves serious risk of war."

5 The President and heads of the Army and Navy and Depart-
6 ment of State were in constant consultation through
7 this period regarding all the aspects of the diplomatic
8 and military situation. b.
9

10 89. A letter from Admiral Stark to the Hon-
11 orable Sumner Welles, dated July 22, 1941, reveals that
12 the President had previously asked Admiral Stark for
13 his reaction to an embargo on a number of articles to
14 Japan and he had told the President that he had
15 expressed the same thought to the President as he had
16 expressed to Sumner Welles and Mr. Hull regarding the
17 cil. He also advised that he was having the War Plans
18 Division make a quick study, which was finished
19 on July 21; a copy of which he had sent to the President
20 who expressed himself as pleased with it and asked
21 Admiral Stark to send a copy to Mr. Hull. a. This study
22 which is dated July 19, 1941, sets forth as its purpose
23 the determination of the effect which would be produced
24

25 88. b. Ex. 2833-A, T. 25,340.

89. a. Ex. 2833-A, T. 25,341.

by enforcement of an absolute or partial embargo on
1 trade between the United States and Japan. It shows
2 that export to Japan in 1940 declined \$5,000,000 from
3 1939 and \$13,000,000 from 1938 but during the first ten
4 months of 1940 the value of exports increased due to
5 higher commodity prices and Japan's increased demand
6 for American products as a result of inability to pur-
7 chase from Europe. Sharp recessions were noted during
8 the last two months of 1940 as a result in part of
9 application of export license controls. ^{b.} In November
10 and December 1940 declines were registered in machine
11 tools, ferro-alloys and refined copper while scrap iron
12 exports were practically negligible. United States
13 exports to Japan during the first five months of 1941
14 were \$44,000,000 less than for the same period of 1940.
15 Trade declined from \$11,000,000 in January to
16 \$6,000,000 in May 1941. Iron and steel products and
17 metal working machinery which amounted to \$67,000,000
18 in 1940 virtually disappeared in 1941 as a direct
19 result of the embargo. ^{c.} American raw cotton purchased
20 by Japan dropped from \$42,000,000 in 1939 to
21 \$29,000,000 in 1940 due to the quantity of piece goods
22 on hand in Japan, the high price of the American cotton
23
24
25 89. b. Ex. 2833-A, T. 25,342, 25,343.
c. Ex. 2833-A, T. 25,344.

1 compared to that of India and of Latin America and
2 shipping requirements for other items.

3 90. Declines in other items including auto-
4 mobiles was due to the decline of purchasing power in
5 Japan and Japanese restrictions on importation of these
6 items. Imports from Japan to the United States were
7 practically the same for 1939 and 1940 and for the first
8 four months of 1941 imports declined only \$8,000,000
9 for the same period in 1940 as compared with the
10 decline in American exports of \$37,000,000.^{a.}

11 91. The report further states: "It is
12 generally believed that shutting off the American supply
13 of petroleum will lead promptly to an invasion of
14 the Netherlands East Indies. While probable, this is
15 not necessarily a sure and immediate result. * * *
16 Furthermore, Japan has oil stocks for about eighteen
17 months war operation. Export restrictions of oil by
18 the United States should be accompanied by similar
19 restrictions by the British and Dutch. * * * Further-
20 more, it seems certain that, if Japan should then take
21 military measures against the British and Dutch, she
22 would also include military action against the Philip-
23 pines, which would immediately involve us in a Pacific
24 War."
25

90. a. Ex. 2833-A, T. 25,345.

1 92. The report ends with a recommendation
2 that trade with Japan be not embargoed at this time.
3 R. K. TURNER. "(Written in longhand:) I concur in
4 general. Is this the kind of picture you wanted.
5 H.R.S."

6 THE PRESIDENT: We will adjourn until half-
7 past one.

8 (Whereupon, at 1200, a recess was
9 taken.)

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AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, I will
continue reading, paragraph 93, page 81.

93. Cordell Hull testified before the Joint
Congressional Committee on the Investigation of the
Pearl Harbor Attack that on July 26, 1939 when the
United States notified the Japanese Government of its
desire to terminate the Treaty of Commerce and Navigation
of 1911, it was felt that the Treaty was not affording
adequate protection to American commerce while at the
same time the operation of the most-favored-nation clause
of the treaty was a bar to the adoption of retaliatory
measures against Japanese commerce. Further that the
termination of the treaty on January 26, 1940 removed
the legal obstacle to the United States placing
restrictions upon trade with Japan; that moral embargoes
were begun by the United States in 1938 and after
the Act of July 2, 1940, the restrictions imposed were
intended also as deterrents and expressions of United
States opposition to Japan's actions. He further stated

1 that the decision of the United States to enter into
2 the conversations with the Japanese was in line with
3 the need of the United States to rearm for self defense.
4 He further pointed out that the freezing order of
5 July 26, 1941 brought under the control of the government
6 all financial and import and export trade transactions
7 in which Chinese or Japanese interests were involved.
8 The effect was to bring about a virtual cessation of
9 trade between the United States and Japan.^{a.}

10 94. The terrific impact of the freezing orders
11 on the civilian life of Japan has been amply demonstrated
12 by the evidence. A large number of trades, industries,
13 and commodities whose very existence depended upon the
14 importation of raw materials and the exportation of
15 finished products unrelated to the production of military
16 goods were immediately affected. Some of these were as
17 follows: Cement, aluminum, lead, copper, coal, rice,
18 pottery, toys, glass and glassware, menthol, tea, soy
19 beans, phosphate rock, fats, oil and oil bearing materials,
20 hides and skin, tanning materials, leather and leather
21 manufactures, potassium salts, wheat and wheat flour,
22 zinc, sugar, lumber, textile machinery, sulphur and
23 sulphuric acid, wool and wool manufactures, marine
24 products, soda, ash and caustic soda, chemical nitrogen,
25 (93. a. Ex. 2840, T. 25,808.)

1 rayon yarn and staple fibre, bicycles, electrical
 2 equipment, silk fabrics, cotton textiles, rubber and
 3 rubber manufactures, rayon fabrics, and raw cotton.^{a.}

4 The evidence further discloses that the freezing orders
 5 affected such basic commodities as rice, fodder, cattle,
 6 sugar, fertilizers, salt and so forth.^{b.} Its textile
 7 industries including such materials as cotton, wool,
 8 silk and rayon upon which many of the civilian population
 9 depended for a living were practically brought to a
 10 standstill.^{c.}

11 95. Diversified commodities which the Japanese
 12 shipping industry carried to various parts of the globe
 13 virtually ceased as a result of the freezing orders.^{a.}
 14 The extent of Japan's imports and exports affected by
 15 kinds, by countries, and by political units has been
 16 graphically presented to the Tribunal.^{b.} We might
 17 mention here incidentally that the prosecution's con-
 18 tention that foreign trade with Manchukuo practically
 19 ceased after the State was established is unfounded when
 20 it is noted that in 1936 almost 2000 foreign ships with
 21 a total tonnage of approximately 5 million tons entered
 22 Dairen.^{c.}

24 (94. a. Ex. 3714, T. 36968; Defense Document 500A-1 -
 25 500A-37.

b. Ex. 3710-A, T. 36966. c. Ex. 3712-A, T. 36968.
 95. a. Ex. 3711-A, T. 36967. b. Ex. 2766-A, Ex. 2766-F
 c. Ex. 3713-A, T. 36968.)

96. As early as July 2, 1941, the United States Department of State had arrived at a conclusion that " * * the freezing of Japanese funds in the United States could be expected in the near future." ^{a.} This negates any prosecution claim that the freezing was in retaliation for the advance into Indo-China. Even if it were in retaliation, an examination of the facts demonstrates unquestionably that such retaliation was not justified.

97. On August 14, 1941, the United States Office of Naval Operations sent a top secret dispatch to the commanders in the Pacific in which was recited a curtailment of Japanese trade and shipping as a direct result of the United States-British-Dutch interference and partially through refusal of transit of the Panama Canal, export control decisions, refusal of bunkering and port facilities and fund freezing. ^{a.}

98. The evidence shows that indignation was running so high in Japan as a result of the progressive steps taken by America including the freezing order that Prince KONOYE took the initiative in a conciliatory move and Ambassador NOMURA had so advised the President by the delivery of a communique from Prime Minister KONOYE. It was about this time that the announcement was made that

(96. a. Ex. 2880, T. 25739.
97. a. Ex. 2854, T. 25576.)

oil was being sent to the Soviet Union and a decision
 1 made to send a military commission headed by General
 2 Magruder to Chiang Kai-shek.^{a.} The situation was becom-
 3 ing so tense that General ISODA pointed out to Brigadier
 4 General Sherman Miles "Japan has her back to the wall.
 5 She can be pushed just so far, then will have to fight
 6 us to save her national honor and integrity though war
 7 with the United States is the last thing desired by
 8 Japan." General Miles also stated in the memorandum he
 9 submitted to the United States Chief of Staff: "General
 10 ISODA's visit clearly parallels conversations now in
 11 progress between the Japanese Ambassador and the State
 12 Department."^{b.}

14 99. The prosecution has conceded that the
 15 report of the United States Tariff Commission in
 16 September, 1941, showed that the United States would be
 17 affected not at all by the cessation of imports from
 18 Japan.^{a.} On October 9, 1941, a request was made of
 19 Congress to amend the Neutrality Act to permit the
 20 United States vessels to rearm and carry cargoes to
 21 belligerent ports anywhere. This was approved on
 22 November 17, 1941.^{b.}

24 100. In order to avoid war notwithstanding the
 25 (98. a. Ex. 2835, T. 25360, 25363.
 b. Ex. 2856, T. 25585, 25587.
 99. a. T. 25083- 25085.
 b. Ex. 2839, T. 25395.)

economic blockade, investigations were made with respect
1 to the possibility of the production of synthetic oil in
2 Japan. It was found to be impossible from a practical
3 standpoint due to the lack of steel pressure pipes,
4 coal, and cobalt.^{a.} A further study was made in October,
5 1941, after the TOJO Cabinet was formed and it was thought
6 that war could be avoided by an expansion of the oil
7 industry, and when War Minister TOJO was told it was im-
8 possible, he ordered a more fundamental investigation on
9 October 29, 1941. After that, even the Planning Board
10 reached the conclusion that such a plan was impossible.
11 Its assumptions and conclusions were submitted to the
12 Imperial Conference on November 5, 1941.^{b.}

14 101. Investigations were also made with
15 respect to shipping if war started. Due to loss of
16 tonnage, inability to obtain coal or iron and the con-
17 sumption of materials on hand, it was felt that Japan's
18 resiliency would be questionable.^{a.} The total amount of
19 oil stocked by the Army, Navy and civilian population
20 showed that Japan, if provoked to war would only be able
21 to continue fully for one year in the air against a
22 strong power and for one year of operations at sea. The
23 assumptions and conclusions with regard to the shipping
24 (100. a. T. 24870.
25 b. T. 24861, 24863.
101. a. T. 24870.)

1 industry show that there was a ~~terrible~~ lack of shipping
2 to carry on any protracted war.

3 102. That the Japanese were led to wonder about
4 the degree of sincerity of the American Government was
5 set forth in a memorandum from Ambassador Grew dated
6 November 10, 1941. He stated that the Japanese Minister
7 had complained that Japan needed raw materials for its
8 existence and that unless the American Government
9 realized this fact successful conclusions to the conver-
10 sations would be difficult. He pointed out that for more
11 than six months the Japanese Government had made pro-
12 posals calculated to approach the American point of view
13 but that the American Government had yielded nothing.^{a.}

14 103. The foregoing abundantly demonstrates that
15 on the facts and the law as pronounced by Secretary
16 Kellogg and this Tribunal, Japan was justified in
17 attacking, as its trade, vital to its very existence,
18 was blockaded. It is to be noted that the evidence in
19 support of this conclusion is not only from Japanese
20 sources, but is derived from statements made by due
21 representatives of the Western Powers at the time of the
22 occurrence of the blockade. In addition to the economic
23 evidence reviewed we shall now proceed to summarize the
24 facts regarding the military encirclement threat which
25 (102. A. Ex. 2838, T. 25394.)

also played a major role in Japan's decision to fight.

1 MILITARY ACTION AGAINST JAPAN

2 104. Hand in hand with the expressed policy of
3 economic strangulation of Japan, the Western Powers took
4 more forceful and drastic action to enforce their policy
5 with military might. Can the prosecution rightfully con-
6 tend that by furnishing men and materials of war to
7 China, and the consequent spilling of Japanese blood on
8 Chinese soil, there was no aggression against Japan? Let
9 us examine the evidence and see if Japan had just cause
10 to react against the military ring being forged around
11 her. The facts amply demonstrate she had just provo-
12 cation to strike in self-defense.
13

14 105. As early as 1933 the United States allo-
15 cated funds for the purpose of constructing and equipping
16 32 naval vessels.^{a.} Next year the Vinson Naval Bill was
17 authorized for construction of ships up to the limits of
18 the Washington and London Naval Treaties.^{b.} In April,
19 1935, the United States War Department Appropriation Act
20 authorized an increase in the Army to 165,000 enlisted
21 men.^{c.}
22

23 106. While Japan was endeavoring to work out
24 its economic difficulties through legislation, Admiral

25 (105. a. Ex. 2842, T. 25435.
b. Ex. 2842, T. 25435.
c. Ex. 2842, T. 25435.)

1 R. E. Ingersoll went to London in December, 1937, The
2 primary purpose of his visit was to investigate and talk
3 with the British Admiralty on figures regarding command
4 relationships, communications, liaison, codes, ciphers
5 and so forth. These conversations were based on the
6 assumption that the United States and Great Britain
7 might find themselves at war with Japan in the Pacific.
8 He readily admitted before the Pearl Harbor Investi-
9 gation Committee that his purpose in going there was
10 "to work out a tentative plan as to how each nation
11 would co-operate with the other in the event that (war)
12 should occur." The report of these conferences remained
13 effective until later agreements A-B-C-1 became effec-
14 tive in 1940 or 1941.^{a.} Admiral Stark, in his testi-
15 mony before the same committee, corroborated this visit.^b

17 107. On January 28, 1938, it was recommended
18 to the Congress of the United States that the United
19 States national defense should be strengthened and not
20 limited to one ocean and one coast. Substantial in-
21 creases were asked in military and naval armaments.
22 Suspicion was voiced in Congress that the naval in-
23 creases were based on an agreement for naval co-
24 operation with some other power such as Great Britain
25 which was denied by Secretary Hull in a letter to a

(106. a. Ex. 2844-A, T. 25448, 25449.

b. Ex. 2849-A, T. 25532.)

1 member of Congress on February 10, 1938. The proposals
2 for military and naval rearmament were substantially
3 adopted by the Congress.^{a.}

4 108. In 1939 the United States proceeded to
5 extend preparations beyond continental America and the
6 location of the military strategic sites being fortified
7 left no doubt that they were aimed at Japan. "Peace and
8 War" reveals that on January 12, 1939, President
9 Roosevelt, in a special message to Congress, asked for an
10 appropriation of more than a half billion dollars for
11 military equipment, particularly military and naval
12 aircraft to strengthen the air defense of continental
13 United States, Alaska, Hawaii, Puerto Rico, and the
14 Canal Zone. He also recommended training additional air
15 pilots and steps be taken for quantity production of war
16 materials. These recommendations were substantially
17 enacted into law.^{a.}

18 109. In a letter of October 21, 1938, to the
19 President, Secretary Hull pointed out the necessity of
20 obtaining sufficient supplies of raw materials to be
21 used in the event of a general war. Steps were initiated
22 to make such supplies available when the recommendation
23 of the Secretary of State was enacted into law on June 7,
24 1939, and \$100,000,000 was appropriated for securing
25

(107. a. Ex. 2843, T. 25442.

108. a. Ex. 2845, T. 25451.)

stock piles of strategic materials for industrial,
1 military, and naval needs. As the result of an agree-
2 ment between United States and Great Britain dated June
3 23, 1939, 100,000 tons of rubber were brought into the
4 United States in exchange for cotton.^{a.}

5
6 110. It was in January, 1940, that the Presi-
7 dent of the United States asked for a further appropri-
8 ation of \$1,800,000,000. In May, 1940, the American
9 fleet was advanced to Hawaii and based there as a threat
10 to Japan.^{a.} In the same month further appropriations in
11 Congress were requested. In his address to Congress on
12 May 16, 1940, President Roosevelt stated that he would
13 like to see the United States "geared up to the ability
14 to turn out at least 50,000 planes a year." He requested
15 one billion dollars appropriation for Army and Navy
16 equipment. On May 31, 1940, an additional request for
17 appropriations of over a million dollars was asked to-
18 gether with authority to call the National Guard and
19 necessary reserve personnel into military service.
20 Congress appropriated the money together with the
21 President's request of July 10, 1940, for five billion
22 dollars more for the rearmament program. His request to
23 call the National Guard and reserve personnel into active
24 military service was also approved by Congress on August
25

(109. a. Ex. 2845, T. 25452.

~~110. a. Ex. 2800-A, T. 25168, 25169.)~~

27, 1940. It is significant to note that the legis-
lation provided that such personnel could be used in the
territories and possessions of the United States includ-
ing the Philippine Islands.^{b.} In January, 1941, the
United States budget called for an additional appropri-
ation of eleven billion dollars, thus raising to twenty
eight billion dollars the outlay for military purposes
since May, 1940.^{c.}

111. The United States Lend-Lease Bill became
law on March 11, 1941, and seven billion dollars was
appropriated to accomplish the objectives of the bill.
The avowed purpose was the establishment of a policy for
unqualified and immediate all-out aid to certain
countries including China.^{a.}

112. Admiral Stark testified in the Pearl
Harbor Attack Investigation that in 1940 he had requested
the British Government to send naval experts to the
United States to discuss the possibility of naval co-
operation. The meetings were held in 1941 and completed
in March, 1941. He stated that he had requested the
meeting on his own responsibility and informed the
President that he had done it. This commission from
Great Britain arrived in the United States in civilian

(110. b. Ex. 2846, T. 25469.

c. Ex. 2847, T. 25493.

111. a. Ex. 2848, T. 25495, 25499.)

a.
1 clothes.

2 113. The next step aimed at Japan was the
3 Most Secret American-Dutch-British Conversations held
4 in Singapore in April, 1941. The report of these
5 conversations states: "It is important to organize air
6 operations against Japanese occupied territory and
7 against Japan herself. It is probable that her collapse
8 will occur as a result of economic blockade, naval
9 pressure and air bombardment." It also referred to the
10 offensive value of Luzon for submarine and air force
11 operations and recommended that every effort should be
12 made to maintain a bombing force there as well as build-
13 ing up a similar force in China and also points out
14 under the heading of "Plan for Employment of Land and
15 Air Forces" that "The operating of Chinese Guerrilla
16 Forces armed, equipped and directed by the Associated
17 Powers. Steps have already been taken by the British
18 Government to organize such operations. It is recom-
19 mended that the United States Government organize
20 similar guerrilla forces." The Report further states:
21 "The organization of subversive activities in Japan and
22 occupied territories. Activities of this kind are al-
23 ready being organized by the British Government. It is
24 recommended that the United States should also undertake
25

(112. a. Ex. 2849-A, T. 25532-25534.)

such activities and co-ordinate them closely with the
British."^{a.}

114. On May 27, 1941, President Roosevelt proclaimed the existence of an unlimited National Emergency and he also stated that the program of the United States had given it time to build more guns, and tanks and planes and ships. At that time, he also made the significant pronouncement that "We in the Americas would decide for ourselves whether and when and where our American interests were attacked or our security

threatened."^{a.} This was not an idle statement. It is submitted that if the United States contended it had the right to determine for itself when its security was threatened, the same rule should apply with respect to Japan.

115. A memorandum was sent from Laughlin Curry to President Roosevelt, May 9, 1941, regarding an aircraft program for China in which he informed the President that he had worked out a tentative program for the balance of the year and pointed out the importance of establishing a Chinese air force in China and the psychological importance

(113. a. Ex. 2851-A, T. 25547, 25548, 25550.
114. a. Ex. 2852, T. 25560.)

of such a program to the Chinese. Attached to
1 the memorandum was the tentative program which
2 included the supplying of 244 pursuit ships, 122
3 bombers, 340 trainers and 22 transport planes.
4 The schedule provided for increased amounts from
5 May to December, 1941, and for the first six
6 months of 1942. The President answered this note
7 under date of May 15, 1941, stating that it was
8 all right to go ahead and negotiate but that he
9 did not want to imply that he was at that time in
10 favor of the proposals. He suggested that it
11 could only be worked out in relationship to the
12 whole military problem and should be taken up with
13 General Burns and General Arnold.^{a.}
14

15 116. On July 5, 1941, Ambassador NOMURA re-
16 lated to United States State Department officials
17 Japan's concern over the threat to it from the ABCD
18 encirclement. He observed that the reports were
19 that America was aiding Chiang Kai-shek in various
20 ways including the dispatch of American pilots to
21 Chungking. American supplies were being sent to
22 Malaya and Netherlands East Indies. There were
23 visits of American squadrons to Australia which
24
25 (115. a. Ex. 2850-A, T. 25536.)

to a naval man like himself were of greater significance
1 than mere courtesy visits. And also prospects of American
2 aid to the Russian Far East and acquisition of American
3 air bases in Siberia.^{a.}

4 117. That Japan knew of and feared the military
5 encirclement appears from the fact that also on July 20,
6 1941, Ambassador NOMURA in a conversation recorded by
7 Admiral Turner complained about the aid the United
8 States was providing China and pointed out that if China
9 was left without industrial and military support, the
10 Chungking regime would be unable to continue the
11 present incident and Japan would then be able to with-
12 draw from the greater part of China. He also pointed
13 out that the United States was improving the Burma Road
14 and was supplying airplanes and pilots to be sent to
15 Chungking and that the pilots were being supplied from
16 the Armed Forces of the United States. He also stated
17 that the British were contributing more and more to
18 measures sustaining the Chungking regime. He also dis-
19 closed that within the next few days Japan expected to
20 occupy French Indo-China that this occupation has become
21 essential for Japan's security against a possible attack
22 from the South and for better control over the activities
23 of Chungking. He also expressed apprehension that the
24
25 (116. a. T. 25733.)

1 United States would take further action against Japan
 2 either economically or militarily as soon as Japan's
 3 troops were known to be occupying French Indo-China.^{a.}

4 118. Throughout this period the United States
 5 increasingly followed a policy of extending all assist-
 6 ance to China. Among the forms of assistance were loans
 7 and credits aggregating some two hundred million dollars
 8 and later lend-lease and military supplies were sent to
 9 be used in China's resistance against Japan.^{a.}

10 119. The Japanese proposal of August 6, 1941,
 11 was in addition to the withdrawal of troops from French
 12 Indo-China that the United States should undertake to
 13 "suspend its military measures in the Southwestern Pacific
 14 areas and to recommend similar action to the Governments
 15 of the Netherlands and Great Britain* * *."^{a.} This
 16 further demonstrates Japan's knowledge of the military
 17 activities in the Pacific and its apprehension of an
 18 attack.

19 120. In August, 1941, the problem of supplying
 20 the munitions of war as provided in the Lend-Lease Act
 21 to belligerent countries was one of the topics discussed
 22 by President Roosevelt and Prime Minister Churchill when
 23 they met at sea.^{a.} It was also in this month of August,
 24

25 (117. a. Ex. 2825, T. 25308, 25309.

118. a. Ex. 2840, T. 25408.

119. a. Ex. 2840, T. 25411, 25412.

120. a. Ex. 2854, T. 25576.)

1 1941, that the results of the conference held at Singa-
 2 pore on April 19, 1941, had been revised and the A-D-B-2
 3 Plan was evolved.^{b.}

4 121. In November, 1941, negotiations between
 5 representatives of the United States and Great Britain
 6 were stepped up upon the arrival of Admiral Philipps in
 7 Manila.^{a.} On November 23rd large United States Army
 8 troop movements were scheduled to depart from San
 9 Francisco involving 22 vessels, which included large
 10 liners, to assemble at Honolulu.^{b.} On November 26, 1941,
 11 a secret message from the United States War Department
 12 to General Short in Hawaii reveals a request that the
 13 United States pilots be instructed to photograph Truk
 14 Island in the Caroline Group and Jaluit in the Marshall
 15 Group and that a visual reconnaissance be made immediately.
 16 Port Moresby, on the Australian mandated island was to
 17 be used. The object of this special photo mission was
 18 to obtain information with respect to naval vessels,
 19 air fields, aircraft, guns, barracks, and camps. The
 20 planes were to be fully equipped with guns and ammunition.
 21 The crews were instructed to use means for self preserv-
 22 ation if attacked.^{c.}

24 122. On November 27th the Chief of Naval

- 25 (120. b. Ex. 2853-A, T. 25565.
 121. a. Ex. 2853-A, T. 25565, 25566.
 b. Ex. 2857, T. 25605.
 c. Ex. 2858, T. 25608.)

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 b. Ex. 2857, T. 25605.
 c. Ex. 2858, T. 25608.)

Operations, Admiral Stark, and the Army Chief of Staff,
1 General Marshall, prepared a memorandum for the Presi-
2 dent advising him that considerable Army and Navy rein-
3 forcements had been rushed to the Philippines and that
4 "ground forces to a total of 21,000 are due to sail from
5 the United States by December 8, 1941."^{a.} Apparently
6 realizing that the economic blockade had proven effective
7 and that Japan was at last being provoked into war a
8 message was sent from the United States War Department on
9 November 27, 1941, stating that "negotiations with Japan
10 appear to be terminated to all practical purposes, with
11 only the barest possibility that the Japanese Government
12 might come back and offer to continue. Japan's future
13 action unpredictable but hostile action possible at any
14 moment. If hostilities cannot repeat cannot be avoided,
15 the United States desires that Japan commit the first
16 overt act."^{b.} Practically identical messages were sent
17 to Hawaii, a dispatch was sent from General Marshall to
18 General MacArthur in the Philippines, and similar
19 messages were sent out by the Navy.^{c.}

20
21
22
23
24
25 (122. a. Ex. 2859, T. 25613.
b. Ex. 2860, T. 25620.
c. Ex. 2861, Ex. 2862, T. 25621, 25622.)

1 123. That the Hull Note of November 26,
2 1941 was intended as a final ultimatum is fully
3 understood from the memorandum of General Gerow
4 of November 27, 1941. It reveals that he had
5 attended a conference, apparently on November 27,
6 1941, with the Secretary of War, Secretary of
7 Navy and Admiral Stark. The Secretaries were
8 informed of a proposed memo which the Chief of
9 Staff and Admiral Stark directed be prepared for
10 the President. "The Secretary of War wanted to
11 be sure that the memo would not be construed as
12 a recommendation to the President that he request
13 Japan to reopen the conversations. He
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was reassured on that point."^a. In view of the foregoing, one wonders if the final message of President Roosevelt of December 7, 1941 was sent merely to keep the record straight, and with no desire to accomplish anything.

124. Under instruction of the Japanese Government, the Japanese Ambassador in Washington, NOMURA, represented to the United States Government on 3 December 1941 among many other things, that "the United States, British and other countries have increasingly of late intensified their military preparations against Japan and adopted a provocative attitude toward us. On the 20th of last month (November), for instance, an American plane made a reconnaissance flight over Garambi in the south of Formosa. This is not an isolated case of such American and British actions. It is our desire in view of the delicate situation that they should themselves refrain from repeating such actions."^a.

125. The prosecution has endeavored to show an elaborate spy system employed by Japan, reporting all types of information to Japan officials. If the

123.

a. Ex. 2863, T. 25624.

124.

a. Ex. 2951, T. 26059-26061.

1 Tribunal so finds, then it naturally follows that the
2 Japanese were informed of the various military steps
3 hereinbefore recited. It cannot be questioned that
4 many of them, such as public messages to Congress,
5 enactment of laws, etc., were well known to the
6 Japanese. The testimony of various accused reveals
7 knowledge and subsequent action on their part based
8 on such knowledge. Japanese newspaper reports reveal-
9 ing some of the Allied actions were not permitted in
10 evidence -- particularly the 1900 series.^{a.}

11 126. In the light of the foregoing can it be
12 said that Japan had no reason for apprehension and
13 that she was not justified in advancing into the
14 southern part of French Indo-China and in attacking
15 the United States and Great Britain on December 8,
16 1941?

17 127. Before moving into the southern part
18 of French Indo-China, the Japanese Government well
19 knew at that time and reacted to the positive actions
20 which had been committed against her up to that time
21 by the Western powers. She knew; the American Navy
22 had been retained in Hawaii as a threat since May
23 1940;^{a.} various appropriations had been made by the
24 125.

25 a. T. 25481, etc.

127.
a. T. 36274.

United States for military expansion and the United States Navy increased;^{b.} Secretary Hull had opposed the British prohibition of aid to Chiang over the Burma Road in July 1940;^{c.} Admiral Yarnell had advocated on July 8, 1940, a strong policy against Japan;^{d.} the creation of the 13th Naval District in Alaska in August 1940;^{e.} public announcement of the details of the eight million dollar naval construction budget for American territories in the Pacific in September 1940;^{f.} the United States statement of policy in September 1940 for the construction of a two-ocean fleet and reinforcement of the air force;^{g.} the pronouncement in October 1940 by Secretary of Navy Knox that America was ready to meet the challenge of the Tripartite Alliance;^{h.} the recommendation of the evacuation of women and children in East Asia in October 1940;^{i.} the one hundred million dollar loan to the Chungking Regime in November 1940; the establishment of the Pan-American Airlines between Manila and Singapore in the same month;^{k.} Foreign Secretary Eden's pronouncement in the House of Commons on

127.

b. T. 36274
c. T. 36245.
d. T. 36247.
e. T. 36246.
f. T. 36246.

g. T. 36247.
h. T. 36247.
i. T. 36248.
j. T. 36248.
k. T. 36246.

1 non-cooperation with Japan;^{l.} broadcast by President
 2 Roosevelt on December 29, 1940 that America would be
 3 an arsenal of democracy for the purpose of combatting
 4 the Tripartite Alliance;^{m.} Secretary Morgenthau's
 5 speech that America was prepared to extend Lend-Lease
 6 to Chungking and to Greece on December 30, 1940;^{n.}
 7 the various conferences between military representa-
 8 tives of the United States, Britain and the Nether-
 9 lands' Army and Navy in Singapore and Manila in
 10 October 1940 and April 1941;^{o.} the announcement of
 11 Secretary Knox in February 1941 that the Chungking
 12 Government had completed an agreement for the purchase
 13 of 200 American planes; the dispatch by the United
 14 States of naval advisors and military observers to
 15 Australia, South East Asia, Thailand, Singapore and
 16 the Dutch East Indies in February 1941;^{q.} guidance by
 17 Great Britain to the Chinese guerilla forces in March
 18 and May 1941;^{r.} the visits of the United States Fleet
 19 to New Zealand and Australia in March 1941;^{s.} the
 20 signing of the British-Chinese Military Agreement
 21 including British aid to China and joint defense plans
 22
 23 127.

24 l. T. 36248.

p. T. 36245.

25 m. T. 36245.

q. Ex. 3566, T. 34677.

n. T. 36245.

r. Ex. 3567, T. 34682.

o. Ex. 3567, T. 34682.

s. Ex. 3566, T. 34677.

for Burma in March 1941;^{t.} the conferences between
 1 representatives from the United States, Great Britain,
 2 and the Netherlands in Manila in April 1941;^{u.}
 3 military preparation of bases in and around the
 4 Pacific areas by the United States, Great Britain,
 5 Australia, New Zealand and the Netherlands in the
 6 early part of 1941;^{v.} the arrival of Brigadier General
 7 Claggett at Chungking in May 1941 for the purpose of
 8 assisting Chiang's army;^{w.} the British-Chinese confer-
 9 ence in Singapore in May 1941;^{x.} and the strengthening
 10 of the anti-Japanese encirclement front with Manila
 11 and Singapore as its pivotal points was being under-
 12 taken. This evidence has not been disputed, nor were
 13 the witnesses cross-examined on it.
 14

128. On July 21, 1941 an understanding of
 15 mutual defense was reached between the Japanese and
 16 French Governments and a formal exchange of notes
 17 took place. The next day pursuant thereto Japan dis-
 18 patched her armed forces to the southern part of
 19 French Indo-China. On July 29, 1941 the protocol
 20 between Japan and France for the joint defense of
 21 French Indo-China was formally signed. Meanwhile the
 22

23 127.

24 t. Ex. 3567, T. 34682.
 25 u. Ex. 3566, T. 34677.
 v. Ex. 3566, T. 34677.
 w. T. 36245.
 x. Ex. 3567, T. 34682.

128.

a. Ex. 651;
 T. 36251, 36252.

1 general economic rupture of July 26, 1941 occurred
2 on the pretext that the advance of Japanese forces
3 into the southern part of French Indo-China was harm-
4 ful to American national defense and American inter-
5 ests. But was this pretext justified?

6 129. Prior to this on August 30, 1940,
7 Japan and France had entered into an understanding in
8 which Japan had assured France of its respect for her
9 rights and interests in East Asia, especially the
10 territorial integrity of French Indo-China and her
11 sovereignty over the whole of the said union.^a The
12 Agreement was concluded on September 22, 1940. At that
13 time neither the United States nor Great Britain took
14 any action on the ground it was harmful to American
15 national defense or American interests. It is not
16 unreasonable to suppose that at that time the military
17 encircling ring against Japan was not yet so strength-
18 ened as might enable them to take such an attitude.

19 130. We cannot but wonder how the Franco-
20 Japanese Protocol of July 29, 1941 and the advance of
21 Japanese forces into the southern part of French Indo-
22 China could constitute a menace to the national
23 defense or interests of either the United States or
24 129.

25 a. Ex. 620, T. 36200.

1 Great Britain. The national policy on the part of
2 Japan had been clearly laid down on the above men-
3 tioned agreement of September 22, 1940. The preamble
4 of the treaty relative to the maintenance of friendly
5 relations and mutual respect for territorial integrity
6 which Japan had concluded with Thailand on June 12,
7 1940 of the same year also had declared that the two
8 countries entered into the treaty because they were
9 convinced that the peace and the stability of East
10 Asia was their common concern. It was indeed because
11 of the peace and tranquility in French Indo-China
12 and Thailand which had the greatest influence upon
13 the destiny of Japan that she offered to mediate the
14 armed border dispute between Thailand and French Indo-
15 China. The Peace Treaty of 1942 was concluded as a
16 result of this successful mediation.^{a.}

17
18 131. What are the contents of the Protocol
19 of July 29, 1941, which caused such a grave inter-
20 national issue? An examination of its text discloses
21 no reason why western powers should have considered it
22 menacing. It specifically states: 1) "The two
23 governments promised to cooperate militarily for the
24 130.

25 a. Ex. 647, T. 36625.

131.

a. Ex. 651, T. 7104, 7105.

joint defense of French Indo-China; 2) the measures
1 to be taken for the purpose of this cooperation shall
2 be the object of special arrangements; 3) the above
3 arrangement shall remain effective only as long as
4 the circumstances which constitute the motive for
5 their adoption exist."

6 132. Carefully scrutinizing and pondering
7 over it, we cannot but be at a loss to find out how
8 this protocol concluded with the passive object purely
9 for self-defense could constitute a menace to the
10 United States and Great Britain. Therefore so far as
11 the United States and Great Britain harbored no in-
12 tention to menace the security of French Indo-China
13 the Protocol as interpreted was utterly harmless to
14 them. It was after all nothing more than a measure
15 of self-defense for Japan. They reverse the cause and
16 effect who maintain that this self-defensive measure
17 was a menace to the United States and Great Britain.

18 133. At the time of the proposed move to
19 French Indo-China, it was stated by the Chief of the
20 First Department of the Navy General Staff that such
21 a step was inevitable because of the effect that the
22 American-Anglo aid to Chiang Kai-shek's regime was
23 having. It was growing increasingly vigorous. The
24 United States, Great Britain, China and the Netherlands
25

1 were acting in concert in the creation of the so-
2 called A,B,C,D ring.^{a.} The Japanese Navy, being
3 charged with the primary duty of national defense in
4 the Pacific, had knowledge of the United States,
5 Great Britain and the Netherlands war preparations
6 designed against Japan in July 1941 and it was the
7 belief of the Navy that Japan was steadily being
8 encircled.^{b.}

9 134. The above consideration naturally
10 leads to the conclusion that it was only as a pretext
11 that the United States and Great Britain made the
12 most of the Japanese advance into the southern part
13 of French Indo-China for the freezing of Japanese
14 assets and for the severance of economic relations
15 with Japan. It can safely be said that they raised
16 trouble where there was no cause. Leaving aside for
17 the moment the right or wrong of the advance into the
18 southern part of French Indo-China and the freezing
19 of the assets, it is submitted that the foregoing amply
20 demonstrates that Japan honestly believed that she was
21 being threatened and that it was necessary for her to
22 enter into the Protocol of July 29, 1941, for her own
23 self-defense. After July 26, 1941, conditions became
24
25 133.

a. T. 26911, 26912.

b. T. 26712.

1 more and more unbearable to Japan because of the
2 affirmative actions of the Western Powers heretofore
3 recorded.

4 135. In explaining the perplexing inter-
5 national situation prior to and on 5 November 1941
6 when the Imperial Conference was held, one of the
7 accused succinctly and accurately portrayed the plight
8 of the Japanese as follows: "The Allies had effected
9 an economic encirclement of Japan with a result more
10 telling than we dared admit to the world. We viewed
11 with alarm the increasing armaments of the United
12 States, and could not reason that such military
13 steps were taken in contemplation of war with Germany
14 alone. The American Pacific Fleet had long before
15 moved from its west coast base to Hawaii and there
16 stood as a threat to Japan. The United States policy
17 towards Japan had been strict and unsympathetic,
18 revealing a determination to enforce their demands
19 without compromise. The American military and economic
20 aid to China had aroused the bitterest of feelings
21 among the Japanese people. The Allied Powers had
22 carried on military conferences which were pointedly
23 directed against Japan. It was a tight, tense and
24 trapped feeling that Japan had at that time.^{a.}

25 135.

a. Ex. 3565, T. 34658, 34659, SHIMADA.

1 136. In attaching weight and importance to
2 the claim that Japan was provoked to and did in fact
3 act in self-defense on December 7, 1941, it must be
4 borne in mind that this position of the accused is
5 not an afterthought. The foregoing summary points to
6 the numerous documents written with regard to protests
7 recorded at the time of their occurrence by Japan's
8 responsible representatives against the economic
9 blockade and military encirclement which was being
10 imposed upon her commencing in 1938. Countless pages
11 of testimony have been taken of witnesses who testi-
12 fied to the innumerable cabinet meetings, liaison
13 conferences, meetings of the Senior Statesmen, Privy
14 Council meetings and military discussions -- all
15 centering around the effect the economic blockades
16 and military threats were having and would continue
17 to have unless Japan undertook some measures to
18 alleviate the condition. This she patiently tried to
19 do by diplomatic negotiations and failed. It may be
20 said that these embargoes at first were irritating and
21 as they increased in intensity, frequency and scope
22 they prodded Japan into a state of anxiety and finally
23 with the realization that there was no hope of diplo-
24 matically breaking out of the strangle hold which was
25 being placed around her neck she was provoked into

1 doing that which any other self-respecting nation
2 would have done.' These well-documented facts recorded
3 at the time of their occurrence are summed up in the
4 Imperial Rescript issued on December 8, 1941 that
5 Japan was acting in self-defense.

6 137. Was Japan justified? Did these accused
7 or those of them who were responsible leaders at that
8 time sincerely and honestly believe that Japan's
9 national existence was at stake because of the blockade
10 and the military encirclement? Responsible leaders in
11 America knew it at that time, and believed it.^a A
12 conclusion to the contrary would be in utter dis-
13 regard of the facts. We know of no parallel case in
14 history where an economic blockade accompanied by the
15 display of military might was enforced on such a vast
16 scale with such deliberate, premeditated, and co-
17 ordinated precision and which accomplished its purpose--
18 that of a provocation into the expressed expectation
19 and desire that Japan strike the first blow. Having
20 accomplished the avowed purpose of goading Japan into
21 an attack it would indeed be a black mark in history
22 to record this attack as other than one of self-defense.

23 137.

24 a. Ex. 2833-A, T. 25336, 25340, 25346, 25350;
25 Ex. 2856, T. 25360, 25363.

138. The well-considered statements of
1 British Cabinet Minister Oliver Lyttleton and ex-
2 President Herbert Hoover as originally reported per-
3 haps best explains the entire situation, when they
4 said respectively -- that it would be "a travesty
5 of history ever to say that America was forced into
6 the war with Japan" and "* * * we would never have
7 been attacked by the Japanese if we had not given
8 them provocation."

10 139. As the A-B-C-D Powers had made the
11 encirclement both military and economic complete, we
12 submit that the first blow was not struck at Pearl
13 Harbor; it was struck when the economic war started
14 long before then. Steadily it constantly contracted,
15 became more effective and devastating so that it
16 threatened Japan's very existence and if continued
17 would have destroyed her. It is evident that these
18 men knew this, believed it, had reason to believe it
19 and acted on their belief. These men are Japanese.
20 They are not Americans or members of the great British
21 Commonwealth of Nations -- nor Dutch, nor Russian,
22 nor French. They were Japanese and their decision was
23 one of life or death for their country. They loved
24 their country and they were in a position where they
25 had to make a decision. We ask each member of this

1 Tribunal to put himself in their position. Would you;
2 could you as patriots, have made any other decision?
3 With that situation, with that honest belief, with
4 ample reason for such belief -- can such a decision
5 whether right or wrong, be called that of criminals
6 and not of patriots? If it was not made with criminal
7 intent but made from motives of patriotism and a
8 sincere belief that the measures decided upon were
9 necessary to protect and preserve their country,
10 then we submit it cannot be held to be criminal by
11 this Tribunal.

12 If the Tribunal please, with respect to
13 Appendix A, may it be transcribed in the transcript?
14 I do not propose to read it.

15 (Whereupon, Appendix A, not read,
16 was copied into the record as follows:)

17 APPENDIX A.
18

19 July 2, 1940.

20 Aluminum, antimony, asbestos, chromium,
21 cotton linters, flax, graphite, hides, industrial
22 diamonds, manganese, magnesium, Manila fiber, mercury,
23 mica, molybdenum, optical glass, platinum group metals,
24 quartz crystals, quinine, rubber, silk, tin, toluol,
25 tungsten, vanadium, wool;

Ammonia and ammonium compounds, chlorine,

1 ~~dimethylaniline, diphenylamine, nitric acid, nitrates,~~
2 nitrocellulose having a nitrogen content of less than
3 12 percent, soda lime, sodium acetate anhydrous,
4 strontium chemicals, sulphuric acid fuming;

5 Aircraft parts, equipment, accessories;
6 armor plate, glass, nonshatterable or bullet proof,
7 plastics, optically clear, optical elements for fire
8 control instruments, aircraft instruments, etc.;

9 Metal-working machinery for: Melting or
10 casting, pressing into forms, cutting or grinding,
11 power driven, welding.^{a.}

12 July 26, 1940.

13 Petroleum products, tetraethyl lead, iron
14 and steel scrap.^{b.}

15 September 12, 1940.

16 Equipment (excluding minor component parts)
17 which can be used, or adapted to use, for the pro-
18 duction of aviation motor fuel from petroleum,
19 petroleum products, hydrocarbons, or hydrocarbon
20 mixtures, by processes involving chemical change;
21 and any plans, specifications, or other documents
22 containing descriptive or technical information of any
23 kind (other than that appearing in any form available
24 to the general public) useful in the design, construc-
25

a. Ex. 2801, Tr. 25192. b. Ex. 2801-B, T. 25193.

1 tion, or operation of any such equipment, or in
2 connection with any such processes.

3 Equipment (excluding minor component parts)
4 which can be used, or adapted to use, for the pro-
5 duction of tetraethyl lead; and any plans, specifica-
6 tions, or other documents containing descriptive or
7 technical information of any kind (other than that
8 appearing in any form available to the general public)
9 useful in the design, construction, or operation of
10 any such equipment, or in connection with any such
11 processes.

12 Plans, specifications, and other documents
13 containing descriptive or technical information of
14 any kind (other than that appearing in any form avail-
15 able to the general public) setting forth the design
16 or construction of aircraft or aircraft engines.^{a.}
17
18 September 25, 1940.

19 All grades of iron and steel scrap. Licenses
20 will be issued to permit shipments to the countries
21 of the Western Hemisphere and Great Britain only.^{b.}
22
23 September 30, 1940.

24 Iron and steel scrap.^{c.}

- 25 a. Ex. 2803, Tr. 25219.
b. Ex. 2804, Tr. 25222.
c. Ex. 2805, Tr. 25222.

December 10, 1940.

1 Iron and steel -- iron ore, pig iron;
2 ferro alloys -- ferromanganese, spiegeleisen, ferro-
3 silicon, ferrochrome, ferrotungsten, ferrovanadium,
4 ferrocolumbium, ferrocabontitanium, ferrophosphorus,
5 ferromolybdenum;

6 Semi-finished products -- ingots, billets,
7 blooms, slabs, sheet bars, skelp, wire rods;

8 Finished products -- structural shapes, steel
9 piling, plates, skelps, rails, splice bars and tie
10 plates, bars -- merchant, concrete reinforcing, cold
11 finished, alloy, tool steel hoops and bailing bands,
12 pipe and tube, drawn wire, nails and staples, barbed
13 and twisted wire, woven wire fence, bale ties, fence
14 posts, black plate, tin plate, sheets, strip, wheels,
15 axles, track spikes, castings, forgings.^a

16
17 December 20, 1940.

18 Bromine, ethylene, ethylene dibromide,
19 methylamine, strontium metals and ores, cobalt,
20 abrasives and abrasive products containing emery,
21 corundum, or garnet, as well as abrasive paper and
22 cloth; plastic molding machines and presses, measuring
23 machines, gauges, testing machines, balancing machines,
24 hydraulic pumps, tools incorporating industrial

25 a. Ex. 2807, Tr. 25333-4.

1 diamonds, equipment and plans for the production of
2 aviation lubricating oil.^{b.}

3 January 10, 1941.

4 Copper: ore -- concentrates, matte and
5 unrefined copper including blister, black or coarse,
6 converter, and anodes; refined copper in bars, billets,
7 cakes, ingots, slabs and other commercial shapes;
8 old and scrap copper; pipes and tubes; plates and
9 sheets; rods; wire -- bare, insulated wire and cable,
10 rubber-covered wire, weatherproof wire, other insulated
11 wire; other primary fabrications; fabrications for
12 munitions purposes, alloys, other than brass and
13 bronze; Brass and bronze: scrap and old, ingots
14 and other commercial shapes, bars and rods, plates
15 and sheets, pipes and tubes, wire (bare or insulated),
16 other primary fabrications, fabrications for munitions
17 purposes; Zinc: ore, concentrates, and dross; cast
18 in slabs, plates or blocks; rolled in sheets and
19 strips; other forms including scrap; alloys; dust;
20 manufactures containing 20 percent or more zinc;
21 Nickel: ores, concentrates, and matte; metal in any
22 form including ingots, bars, rods, sheets, plates and
23 scrap; alloys containing 10 percent or more nickel
24 including scrap; nickel compounds (chemical) contain-

25 b. Ex. 2808, Tr. 25240.

1 ing 10 percent or more nickel; Potash: potassium
2 salts and compounds; potassium hydroxide, potassium
3 carbonate, potassium chlorate, potassium perchlorate,
4 potassium cyanide, potassium iodide, potassium
5 nitrate, potassium permanganate, potassium acetate,
6 potassium bicarbonate, potassium bitartrate;

7 Potassic Fertilizer Materials: potassium chloride,
8 potassium sulphate, all other potassic fertilizer
9 materials containing 27 percent or more potassium
10 oxide equivalent, all combinations and mixtures of
11 any of the foregoing containing potash salts of 27
12 percent or more potassium oxide equivalent.^{a.}

13 February 4, 1941.

14 Well and refining machinery, petroleum and
15 gas well equipment and parts including well drilling
16 machinery and parts, petroleum refining machinery,
17 equipment and parts, radium, metal, salts and compounds,
18 uranium, metal, salts and compounds, minerals, calf
19 and kip skins, calf skins, kip skins.^{b.}

20
21 Iron Ore: iron ore -- Iron and Steel Semi-
22 manufactures: pig iron, iron and steel scrap, No. 1
23 heavy melting steel scrap (Category 2), No. 2 heavy
24 melting steel scrap (Category 3), hydraulically

25 a. Ex. 2809, Tr. 25251.

b. Ex. 2810, Tr. 25251-2.

compressed and baled sheet scrap (Categories 7 & 8),
1 cast and burnt iron scrap (Categories 1, 9, 10, 11,
2 12), other (Categories 4, 5, 6, 13) (Includes heavy
3 shoveling steel, selected rail scrap, machine shop
4 turnings, wire shorts, rerolling rails, rejects,
5 etc.); tin plate scrap -- (includes tin plate clippings,
6 cuttings, stampings, trimmings, skeleton sheets and
7 all other miscellaneous pieces of discarded tin plate,
8 which result from the manufacture of tin plate, and
9 of tin-bearing articles from tin plate) (Placed under
10 export control, Executive Order, effective April 16,
11 1936); tin plate circles, strips, cobbles and scroll-
12 shear butts; waste-waste tin plates; terneplate
13 waste-waste, clippings and scrap;

15 Iron and Steel Products -- steel ingots,
16 blooms, billets, slabs, sheet bars, and tin plate
17 bars (Include ingot iron, and other iron made in
18 steel-making furnaces) not containing alloy, alloy
19 steel including stainless;

20 Iron and Steel Bars and Rods (Include rounds,
21 flats, squares, etc.) -- steel bars cold finished,
22 iron bars, concrete reinforcement bars (Include
23 deformed and twisted), other steel bars, including
24 drill rods, merchant bars, tool steel bars, and drill
25 steel: not containing alloy, stainless steel, alloy

steel other than stainless, wire rods. Iron and
1 Steel Plates, Sheets, Skelp and Strips (Include
2 waste and waste-waste plate, sheet and strip):
3 Plates: armor plate, other than that listed in the
4 President's Proclamation of May 1, 1937, boiler
5 plates, other plates, not fabricated (Include hot
6 and cold rolled), not containing alloy, stainless
7 steel, alloy steel other than stainless; Skelp iron
8 and steel (consists of long strips used in the
9 manufacture of pipes and tubes); Iron and Steel
10 Galvanized -- iron sheets, steel sheets; steel
11 sheets, black ungalvanized (Include hot and cold
12 rolled), not containing alloy, stainless steel,
13 alloy steel, other than stainless; iron sheets,
14 black (Include material under 1/8" in thickness in
15 6033-6036); strip, hoop, band, and scroll iron or
16 steel -- cold rolled, not containing alloy, stain-
17 less steel, alloy steel, other than stainless, hot
18 rolled, not containing alloy, stainless steel, alloy
19 steel, other than stainless; Tin Plate and Taggers'
20 tin (Include waste tin and plate), Terneplate
21 (Includes waste terneplate); Steel Mill Manufactures--
22 structural iron and steel, water, oil, gas and other
23 storage tanks complete, and knocked-down material
24 for permanent or temporary installation; structural
25

1 shapes, not fabricated (Include heavy, light, and
2 bar-sized structural shapes), fabricated structural
3 iron or steel; plates, fabricated, punched, or
4 shaped, steel piling; railway track materials --
5 rails -- 60 pounds and over per yard, less than 60
6 pounds per yard, relaying rails; rail joints, splice
7 bars, fishplates, and tieplates, switches, frogs,
8 crossings, and derails, railroad spikes (Include
9 railroad screw spikes); Tubular products and fittings--
10 boiler tubes, seamless, welded; casing and oil line
11 pipe, seamless, welded; seamless black pipe, other
12 than casing and oil line, cast-iron pressure pipe,
13 cast-iron soil pipe, welded black pipe, steel,
14 wrought iron, welded galvanized pipe: steel, wrought
15 iron; rigid electrical conduit of iron or steel; all
16 other iron and steel pipe (Include riveted pipe and
17 mechanical steel tubing); Wire and manufactures:
18 iron or steel wire, uncoated (Includes plain steel,
19 stainless steel, and alloy steel other than stainless),
20 galvanized wire, barbed wire, woven wire fencing,
21 wire rope and wire strand -- wire rope and cable,
22 not insulated, wire strand; electric welding rods and
23 wire of iron or steel; welding rods and wire of iron
24 or steel (other than electric); bale ties; electrical
25 ~~and telephone transmission wires of iron or steel,~~

coated with aluminum, copper, or other metals;

1 insulated wire and cable having an iron or steel core;

2 twisted wire; other coated wire of iron or steel;

3 castings and forgings -- grey-iron castings (Include

4 semi-steel castings), malleable-iron castings, ingot

5 molds, steel castings -- not containing alloy, alloy

6 steel, including stainless, railway car wheels and

7 axles (Exclude railway car ties, locomotive wheels,

8 tires and axles); railway car wheels; railway car

9 axles, without wheels; railway car axles, fitted with

10 wheels; Iron and Steel forgings (Exclude steel grinding

11 balls) -- not containing alloy, alloy steel including

12 stainless; Advanced Manufactures -- fence posts, metal

13 drums and containers, filled or unfilled, for oil,

14 gas, and other liquids; tool bits or tool bit blanks;

15 Ferro Alloys -- ferrochrome, ferrocolumbium, ferro-

16 manganese and spiegeleisen, ferromolybdenum, ferro-

17 phosphorus, ferrosilicon, ferrotitanium and ferro-

18 carbontitanium, ferrotungsten, ferrovanadium.^a.

19 February 25, 1941.

21 Belladonna: belladonna leave, U.S.P.;

22 belladonna plaster, U.S.P.; extract of belladonna,

23 U.S.P.; fluid extract of belladonna leaf, N.F.;

24 tincture of belladonna, U.S.P.; belladonna ointment,

25 a. Ex. 2811, Tr. 25253.

U.S.P.; belladonna root, U.S.P.; fluid extract of
belladonna root, U.S.P.; belladonna liniment, N.F.;

Atropine: atropine, U.S.P. alkaloid;
atropine hydrobromide; atropine hydrochloride;
atropine methylbromide; atropine methylnitrate;
atropine nitrate; atropine salicylate; atropine sul-
fate, U.S.P.; atropine sulfuric acid; atropine
valerate.

Sole Leather -- bends, backs, and sides.

Belting leather.^a

February 25, 1941.

Beryllium: ores and concentrates, metal,
alloys and scrap, beryllium salts and compounds.

Graphite electrodes; Aircraft Pilot Trainers;
Trainers for ground instruction of pilots, student
pilots and combat crews for aircraft in instrument
flying, navigation, bombing or gunnery.^b

March 4, 1941.

Cadmium -- ores and concentrates, metal,
alloys, cadmium salts and compounds, cadmium chloride,
cadmium oxide, cadmium sulfate, cadmium plating
salts, cadmium sulfide, cadmium lithopong.

Carbon Black -- carbon black, including gas

a. Ex. 2812, Tr. 25253-4.

b. Ex. 2813, Tr. 25254.

1 black.

2 Coconut Oil -- edible, inedible. Copra.

3 Cresylic Acid and Cresols. Fatty acids
4 produced from vegetable oils under export control.

5 Glycerin. Palm-Kernel Oil and Palm Kernels -- palm
6 kernel oils, edible, inedible, palm kernels.

7 Pine Oil. Petroleum Coke. Shellac -- lac,
8 crude, seed, button and stick, unbleached shellac,
9 bleached shellac.

10 Titanium -- ores and concentrates, ilmenite,
11 rutile, metal, alloys, titanium salts and compounds,
12 titanium dioxide, titanium tetrachloride.^{a.}

13 Jute: fiber, burlaps except when used as a
14 covering for other merchandise or as a component part
15 of other products, bags except when used as a con-
16 tainer for other merchandise;

17 Lead: ore and matte, pigs and bars, sheets
18 and pipes, solder;

19 Borax: boric acid, borates, crude and refined.

20 Phosphates: phosphoric acid, phosphorus,
21 phosphate rock containing 20 percent or more phosphorus
22 pentoxide equivalent, sulphur-phosphate containing
23 40 percent or more phosphorus pentoxide equivalent.^{b.}

24
25 a. Ex. 2814, Tr. 25255.

b. Ex. 2815, Tr. 25258.

1 March 27, 1941.

2 Animal, fish and marine mammal oils, fats
3 and greases, edible and inedible;

4 Vegetable oils and fats, edible and inedible;
5 vegetable oil seeds, and vegetable and other oil-
6 bearing raw materials; Fatty acids; Bristles; Nux
7 vomica; Nylon; Kapok; Purified wood pulp containing
8 80 per cent or more alpha-cellulose; Cork; Carbon
9 electrodes; Petrolatum; Allyd resins; Explosives in
10 addition to those listed in Proclamation 2237 of
11 May 1, 1937; Detonators and blasting caps; Napthalene;
12 Phenol; Aniline; Phthalic anhydride; Dibutyl phtalate;
13 Diethyl phthalate; Dipropylphthalate; Omega Chloro-
14 acetophenone; Styrene; Nitroderivatives of benzene,
15 toluene, xylene, napthalene, and phenols in addition
16 to those specified in the proclamation of May 1, 1937;
17 Strychnine and salts thereof; Polymers and copolymers
18 of butadiene, acrylonitrile, butylene, chloroprene,
19 styrene, vinylidene, chloride, and synthetic rubber-
20 like compounds, fabricated or unfabricated; Chloropic-
21 rin; Tartaric acid; Rochelle salts; Cuprous oxide;
22 Acetic aldehyde; Pentaerythrite; Formaldehyde; Nitro-
23 guanidine; Guanidine nitrate; Dicyanodiamide; Mono-
24 chloroacetic acid; Chloroacetyl chloride; Thiodiglycol;
25 Ethylene chlorhydrine; Hexamethylene tetramine;

1 Acrylonitrile; Butadiene; Butylene; Chloroprene;
2 Sodium chlorate; Sulphur chlorides; Arsenic trichloride;
3 Vinylidene chloride; Iodine.^a

4 April 14, 1941.

5 Machinery.^b

6 April 14, 1941.

7 Vegetable fibers and manufactures; Theo-
8 bromine; Caffein; Sodium cyanide; Calcium cyanide;
9 Casein.^c

10 May 28, 1941.

11 Control extended to Philippine Islands.^d

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24 a. Ex. 2816, Tr. 25259.
25 b. Ex. 2817, Tr. 25260.
c. Ex. 2818, Tr. 25260.
d. Ex. 2820, Tr. 25262-3.

1 THE PRESIDENT: Mr. Logan, Port Moresby is
2 not a mandated territory.

3 MR. LOGAN: I am sorry; I didn't get your
4 remark.

5 THE PRESIDENT: I said Port Moresby is not
6 a mandated territory; it is in Australian territory,
7 the territory of Papua.

8 MR. LOGAN: I am sorry, your Honor. I got
9 it from the record somewhere.

10 Mr. Roberts will proceed now.

11 THE PRESIDENT: Mr. Roberts, we have not
12 received your material.

13 MR. ROBERTS: I will proceed with Section L,
14 Japanese Naval Activities prior to December 7, 1941.
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1 JAPANESE NAVAL ACTIVITIES PRIOR TO DECEMBER 7, 1941

2 Preparation for war is not an offense under
3 the Charter. It has never been considered as such by
4 any nation in the history of the world. At this very
5 moment the leaders of the governments of every power
6 of the globe are vitally concerned with their country's
7 state of military preparedness. Preparation for war
8 and rearmament are identical expressions. The kindred
9 Tribunal in Nuernberg definitely ruled the latter was
10 no offense under their Charter.¹

12 Therefore, if the physical act of military
13 preparation or rearmament is not in and of itself
14 criminal or wrong it becomes so only if pursued for the
15 purpose of waging aggressive war.² The determination of
16 whether or not the marshalling of a nation's military
17 strength and the plans that made such possible are
18 criminal provokes a most profound question.

25 1. Nuernberg Judgment p. 137.
2. Ibid.

By the exercise of the "hindsight rule"

1 it becomes possible to start with the war that
2 has been waged and look back pointing out the varied
3 and many moves that created the physical ability of
4 a nation to fight. Undoubtedly this is the procedure
5 of reasoning employed by the prosecution here, for
6 they have seized upon every step of the military and
7 naval history of Japan during the Indictment years as
8 evidence of preparation for aggressive war.
9

10 German counsel at Nuernberg stated it rather
11 well when he said:

12 "Armament may, in fact must, look just the
13 same if it is carried out for security and defense as
14 it does in the case of aggressive war."^{1.}

15 Excerpts from General Marshall's report as
16 Chief of Staff were there cited:

17 "Nature tends to abhor weakness... Weakness
18 presents too great a temptation to the strong... We
19 must start, I think, with a correction of the tragic
20 misunderstanding that a security policy is a war policy."^{2.}

21 The prosecution commences its criticism
22

23 1. Nuernberg transcript p. 13,128, July 8.

24 2. Marshall, Report of Chief of Staff U. S. Army,
25 6. 117 (1945) quoted in Nuernberg transcript p.
13,126, July 8.

1 of Japanese naval preparations with the allegation that
2 Japan freed itself from the Washington and London Naval
3 Treaties in order to prepare for war.¹ This of itself
4 is no charge at all. To denote criminal activity the
5 evidence must prove beyond a reasonable doubt² that the
6 ultimate objective was more than ordinary security
7 measures of defense -- was more than war itself -- and
8 was, in fact, aggressive war.

9 With this determination of the prosecution's
10 onus we generalize for a moment. The casual observer
11 might wonder, in view of the prosecution's pointed
12 statements, that Japan, wicked and willful as it was
13 during this period, even concerned themselves with the
14 small matter of a naval limitations treaty if they were
15 bent upon aggressive action. It would hardly please
16 the vehement prosecution to infer that the Japanese
17 action in this regard indicated a respect for treaties
18 quite inconsistent with the prosecution's theory. It
19 would not be in keeping with the inferences and even
20 bold statements of the prosecution to suggest that this
21 island nation might have regarded naval power as the
22 very soul of its national security. And it might be
23 considered the height of impertinence to speculate that
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25

1. Prosecution argument para. F-54, tr. 39,395.

2. Tr. 23.

1 this country, which had during the short years before
2 risen to a position of international recognition as a
3 progressive and leading power, quite frankly and open-
4 ly professed to the world it felt its security demanded
5 a more equal distribution of naval strength. But at such
6 risk as the defense may incur we advance this thesis
7 and move to a discussion of the Japanese action regard-
8 ing the naval treaties.

9 At the time of the execution of the Washington
10 Naval Treaty in 1922 there existed a bond of friendship
11 and trust between Japan, the United States, Great
12 Britain and France which had been tied during their
13 allignment in World War I. Such a condition of inter-
14 national feeling as then existed must have discouraged
15 strong criticism of Japan's conceding to a naval limi-
16 tation which rated her beneath that of Great Britain
17 and the United States. But those who appraised the
18 agreement from purely a naval aspect were not even then
19 satisfied with the substance of the armaments allotted
20 Japan.
21

22 It is not difficult to realize that by 1930
23 those naval leaders upon whose shoulders the burden of
24 providing security from the possibility of attack by
25 sea were even more highly concerned with the treaty

1 restrictions. For during the eight years that elapsed
2 from the time of the original signing, the weapons of
3 warfare had changed, the international situation had
4 undergone a metamorphosis and the complacency of Japan
5 based upon its original feeling of security at having
6 been so recently allied with the United States and
7 Great Britain dissipated.²

8 By the terms of the Washington Treaty the
9 number of capital ships and aircraft carriers permitted
10 Japan was limited to 60% of those of the United States
11 and Great Britain.³ It was but natural therefore that
12 reasoned opposition existed to the culmination of the
13 1930 London Treaty without modifications being made
14 which satisfied the requirements advocated by the Naval
15 General Staff. But regardless of the international
16 grumbling in Japan, often a healthy exercise of govern-
17 ment functions, the treaty was concluded and with the
18 approval of the Naval General Staff.¹

19 The prosecution charge that from 1930 to 1936
20 the Navy worked zealously to free itself from the treaty
21 restrictions² amounts to no less than a distortion of
22 the evidence. The evidence has been that Japan sought
23 a modification of that treaty³ and the imposition of

25 2. Ex. 3011; tr. 34,512, 34,524

3. Tr. 26,660

1. Ex. 3011

2. Pros. argument para. F-55, tr. 39,396

3. Tr. 26,782

1 even severer restrictions, which if accepted could not
2 have but precluded the possibility of aggressive ac-
3 tion being taken by the powers.⁴ The 1930 treaty limi-
4 tation on auxiliary vessels proved a severe restric-
5 tion on Japan, since it closed the door on the possi-
6 bility of providing the needed extra security (through
7 the construction of lighter vessels) caused by the
8 60% restriction on capital ships.⁵

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25 4. Tr. 26,785
5. Tr. 26,660

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Shortly after the 1930 naval treaty and about the time of Secretary Stimson's so-called "Hats Off" speech advocating naval building in the United States the Japanese General Staff was attempting to replenish its Navy with ships under 600 ton capacity and which were not covered by treaty limitations. This experiment proved disastrous and deplorable accidents occurred involving the sacrifice of many lives through the capsizing in heavy weather of these torpedo boats which were too heavily armed.¹

Coming to the 1934 preliminary naval conference at London called at the invitation of Great Britain we find the prosecution charging that Japan delayed in accepting the invitation given in May² and did not send a delegate until October. This is also at variance with the facts for the British invitation was received by Japan on May 17 and acceptance of the proposal was made on May 30.³ The then Japanese Ambassador to Great Britain -- MATSUDAIRA -- was nominated as its delegate. Talks with the British commenced on June 18 and with the United States on June 19.⁴ The talks were discontinued on June 12

1. Tr. 26,661

2. Pros. Argument para. F-57, Tr. 39,399.

3. Tr. 26,783

4. Tr. 26,783.

1 with the understanding that they should be reopened
2 on October 23 at which time Vice Admiral YAMAMOTO
3 was named as an additional delegate and promptly
4 arrived to carry on deliberations at the time fixed.¹

5 The why and wherefore of Japan's proposal
6 at this 1934 sub-conference and the 1935 discussions
7 that followed are set out in the personal testimony
8 of a defense witness who is perhaps the only man
9 living today who attended all of the naval conferences
10 in the high capacity of an expert.² An accurate word
11 picture of the exchange of thoughts and detailed
12 discussions which occurred at those conferences and
13 which are not to be found in their entirety in offi-
14 cial reports were sought to be presented before this
15 Tribunal through the personage of this witness. The
16 defense even suggested that the prosecution should
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- 24 1. Tr. 26,782
25 2. Tr. 26,780

1 welcome this chance to cross-examine a witness
2 of such reputation and knowledge¹ but they did not
3 avail themselves of the opportunity.²

4 Unfortunately the view was accepted that
5 his testimony was particularly objectionable
6 because of its length,³ with the result that its
7 delimitation to a small part of its original form
8 destroyed what we considered to be valuable back-
9 ground revelations needed to fully comprehend the
10 events that led to the Japanese abrogation.⁴

11 The thought seems to prevail that the
12 so-called "common upper limit" proposed by the
13 Japanese delegation at the London preliminary
14 negotiations in 1934 and the London Conference of
15 the following year was not only an abrupt proposal
16 but one solely calculated to benefit Japan.⁵
17 But such an opinion is neither just nor borne out
18 by the evidence. Historically speaking, it could
19 hardly be called a Japanese plan for, as to the
20 original idea, it would be more in accordance with
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23 1. Tr. 26,779

24 2. Tr. 26,820

25 3. Tr. 26,777

4. Tr. 26,780.

5. Indictment -- Appendix A, Section 5(a).

1 the truth to say that it originated with other
2 powers.

3 On August 7, 1923 the British Embassy
4 sent to the Japanese Government an Anglo-French
5 compromise plan containing a provision fixing a
6 fiximum limit for cruisers and submarines.¹ It
7 resulted in what is known as the Paul Boncour
8 plan after further study in the 1927 Disarmament²
9 Preparatory Commission of the League of Nations.
10 Another similar instance was a proposal made by
11 the British delegate at the Geneva General Dis-
12 armament Conference in November, 1932 which called
13 for a reduction of the air forces of leading
14 powers to the level of Great Britain which at
15 that time ranked fifth.³ But it remains to be seen
16 that nobody charged Great Britain with submitting
17 a proposal that had no chance of acceptance.
18 There was also the so-called "Hoover Plan" of the
19 United States submitted at the 1932 Geneva Con-
20 ference calling for sweeping reductions of one-
21 third to one-fourth in naval armaments but no one
22 accused the United States of bad faith in proposing
23

- 24
25
1. Ex. 3011
2. Tr. 26,793
3. Tr. 26,803

1
an unreasonable program.¹

2 Thus all of the above plans were taken into
3 consideration by Japan more or less as a pattern
4 in formulating their proposal.² And since the
5 Japanese delegates were under instructions to
6 forego immediate insistence or enforcement for
7 a considerable period, they did not feel their
8 proposal was anything incapable of acceptance or
9 unreasonable in nature.³

10 As to the argument predicated upon the
11 differences in vulnerability of the nations in-
12 volved which required various allotments in naval
13 strength to insure security, the Japanese delegate,
14 Admiral NAGANO, admitted the need for adjustment
15 in regard to Great Britain's strength might be taken as
16 the common upper limit and that there would never
17 actually be parity on this basis. He even went
18 so far as to say that Japan was willing to have
19 Great Britain exceed the common upper limit but
20 that great care should be taken in working it out.⁴

23 1. Tr. 26,803

24 2. Ibid

25 3. Ibid

 4. Tr. 26,811-26,812.

1 Further, it was pointed out that in spite of the
2 difference of vulnerability between the United
3 States and Great Britain, they nevertheless had
4 parity.¹ Thus it was pointed out that if the
5 United States, although less vulnerable than
6 Great Britain, had naval parity why should there
7 be a great difference between the naval strength
8 of the United States and Japan even if it be
9 conceded that the latter was less vulnerable.²
10 Japan however contended that they were more
11 vulnerable than the United States.³

12 But rather than lose ourselves in the
13 arguments concerning the justification of naval
14 strength allotted to the leading powers it would
15 be much better to simply point out that the
16 Japanese action ultimately taken was legally per-
17 missible under the treaty provisions.⁴ Moreover,
18 before leaving the 1934 conference, after receiv-
19 ing what amounted to an invitation to do so,⁵
20 the delegates wired their government for
21

- 22
23 1. Tr. 26,786.
24 2. Ibid
25 3. Ibid
4. Tr. 11,251
5. Tr. 26,051, 26,815

1
instructions. Thereafter, Japan insisted on further
2 explainin¹g her views but it was refused. She did not
3 even then leave but advocated that the five powers
4 agree on such matters as seemed possible such as the
5 use of submarines, but Great Britain rejected this
6 proposal.² The Japanese delegates then suggested
7 that, in lieu of their leaving the conference, an
8 indefinite postponement be had. But this, too, was
9 rejected by the British.³ It was only when the
10 Japanese proposal was definitely rejected that they
11 withdrew.⁴ But in keeping with the request made she
12 left an observer.⁵ In so acting she was within her
13 rights under Article 22, Paragraph 1 of the Treaty
14 which provided for such a step.

15 Such small attempts to concoct a conspiracy or
16 to introduce matters which tended to point a finger
17 in that direction is revealed in the reference to
18 YAMAMOTO and NAGANO, Japanese delegates to the 1934
19 and 1935 conferences respectively, serving together
20 for a considerable period of time as Minister and
21 Vice Minister of Navy in 1936 and 1937.⁶ The inference

- 22 1. Tr. 26,815
23 2. Tr. 26,816
24 3. Tr. 26,817
25 4. Tr. 26,818
5. Tr. 26,819
6. Tr. 11,182

being that as high-ranking naval officers they
1 worked together closely in a conspiracy tone. Upon
2 cross-examination it was revealed that the "consider-
3 able period of time" mentioned was a matter of sixty
4 days.

5 It was testified that NAGANO stated the
6 aircraft carrier was the principal type of aggressive
7 naval arm. But on cross-examination it was revealed
8 that NAGANO also listed battleships and other capital
9 ships as offensive naval arms, as well as aircraft
10 carriers.¹ The prosecution witness attempted to
11 take purported quotations of Admiral NAGANO, then an
12 accused here, and to construe them in the worst pos-
13 sible sense. But it appeared on cross-examination
14 that the quotations attributed were not actual quota-
15 tions and that when read in the light of the full text
16 of the document they appeared entirely different.²

17 We refer the Tribunal to prosecution exhibit
18 914, a portion of which is read into the transcript
19 commencing on page 9,241. This represents the views
20 of Admiral TOYODA, Soemu who in 1937 was Chief of the
21 Naval Affairs Bureau of the Navy Ministry and in a
22 position to express the thinking of that organization.
23

24
25 1. Tr. 11,248
2. Tr. 11,244

1 In speaking of Japan's new supplementary program for
 2 the fiscal year 1937, he pointed out that even if
 3 Japan had remained a party to the London Naval
 4 Treaty she would have been authorized to build 53,000
 5 tons of shipping in the nature of replacements and
 6 that the program for the coming year, even though
 7 Japan was not now bound by the Treaty, provided for
 8 the building of tonnage far below 53,000.¹ He said:

9 "Japan has no intention whatsoever of
 10 making plans which might threaten the United States
 11 and incite a shipbuilding competition."²

12 Was it an aggressive navy which through such a
 13 spokesman said:

14 "If Japan and the United States should fight
 15 one another in the future the war will be absolutely
 16 a question of life and death to Japan; but not to
 17 the United States. That is, to the United States it
 18 will be a war for prosperity, while it will be a
 19 question of life and death to Japan."³

20 The Japanese are criticized for rejecting
 21 proposals from the United States, Great Britain and
 22 France for the reciprocal exchange of naval construc-
 23 tion information.⁴ There is a simple answer to this.

24 1. Ex. 914, p. 21
 25 2. Ibid.

3. Ex. 914, Tr. 9,243.
 4. Pros. Argument para. F-59,
 Tr. 39,401.

1 The Japanese had refused to continue on under the
2 treaty limitations because they openly deemed its
3 provisions inadequate to provide the security Japan
4 desired. To have continued with the exchange of
5 naval construction information would have in effect
6 been the same as if Japan had remained bound by the
7 treaty restrictions. This because the truly superior
8 industrial strength and building capacity of the
9 United States and Britain dictated that they could
10 at all times keep as far ahead of Japan in naval
11 construction as the treaty had provided. It was
12 interpreted, therefore, as a device of the British
13 and the United States to check a weaker naval power --
14 treaty or no treaty.¹

15 II. EXPANSION AND STRENGTHENING OF NAVY.

16 Since, from its evidence and argument, the
17 prosecution has assumed that the strength of a
18 country's navy and the building of that strength is
19 indicative of guilt of some sort, we are forced to
20 answer their assertions. The prosecution points
21 with pride at their evidence of the rise in budget
22 figures as indicating the preparation of the Japanese
23 Navy for war. But they close their eyes to the com-
24 parable rise in the budget appropriations of the
25 1. Tr. 9,246

1 United States in 1931 which represented the amount
2 of \$358,000,000 and the rise up to \$3,500,000,000 in
3 1941.¹ And their mention of the increase in Japanese
4 Navy personnel falls with a dull thud when compared
5 with that of the United States. In the year 1940
6 when preparations may have been said to be at their
7 height, the United States naval personnel totalled
8 280,086 to Japan's 215,273.²

9 Desperate in their attempt to prove how
10 large and aggressive in design the Japanese Navy was,
11 they introduced two sets of statistics -- one by the
12 oral testimony of Admiral Richardson, former Com-
13 mander in Chief of the United States Fleet and,
14 incidentally, their only witness who appeared person-
15 ally in this phase,³ and charts prepared by official
16 sources of the Japanese Government.⁴ This respected
17 witness although testifying after the introduction of
18 the official Japanese figures as a prosecution exhibit
19 did not see fit to change his testimony relative to
20 the Japanese naval strength. It was only after being
21 challenged on cross-examination⁵ that he confessed
22 his mistake regarding aircraft carriers. There he
23

24 1. Ex. 3004, Tr. 26,652

25 2. Ex. 3003, Tr. 26,651

3. Ex. 1,249, Tr. 11,184

4. Ex. 916, 917, 918, Tr. 9,251; 9,253; 9,254.

5. Tr. 11,260

1 admitted that he had according to the prosecution's
2 own evidence, over-estimated the Japanese strength
3 by 26,000 tons. He was asked whether or not he con-
4 sidered this figure of 26,000 to be relevant, and he
5 said: "I think it is relevant."¹ With respect to
6 submarines he also confessed that he had misinformed
7 the Tribunal when he stated that Japan had 44 of such
8 craft in 1931 and 74 in 1941. He said however that
9 he was quite willing to accept the true figure of 67
10 submarines in 1931 and 95 in 1941. The effect of
11 his testimony was to show a loss of two submarines
12 rather than an increase² of thirty. However, had
13 this statement gone unchallenged by defense counsel
14 it would have been in the record and against the
15 Japanese Navy.

16 In reard to destroyers, he admitted error
17 in informing the Tribunal that Japan had 52 in 1931
18 and 102 in 1941. He stated the correct figures were
19 actually 110 destroyers in 1931 and 112 in 1941
20 showing an increase, not of fifty as he had originally
21 stated, but of only two.³

23 1. Tr. 11,260

24 2. Tr. 11,261

25 3. Tr. 11,260 - of. Tr. 11,185

1 THE PRESIDENT: We will recess for fifteen
2 minutes.

3 (Whereupon, at 1445, a recess was
4 taken until 1500, after which the proceed-
5 ings were resumed as follows:)

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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Roberts.

MR. ROBERTS: The witness stated the tonnage
of a ship is normally closely and highly coordinated
with the number of aircraft it can carry.¹ The evi-
dence discloses the total United States aircraft
tonnage as of the time of Pearl Harbor was 162,600
tons as compared to the Japanese total of 152,970 tons,
indicating if the prosecution witness was correct
in his statement, that the United States could carry
more planes even if they possessed less ships and that
this element was the most important in regard to the
operation of aircraft carriers, especially in regard
to the attack on Pearl Harbor.² The evidence then
shows that the average aircraft carrier capacity of
Japan was 480 planes³ and the United States, 496
planes.⁴ Surely, the aggressiveness of an aircraft
carrier is dependent on the planes it can carry.
Which fleet, therefore, was capable of the most
effective action?

Again, the evidence reveals the Japanese

- (1. Tr. 11,257.
2. Tr. 11,257
3. Tr. 11269
4. Tr. 11,267)

1 aircraft carrier "Hosho" was, according to the speci-
 2 fications of the Washington and London Naval Treaties,
 3 out of date and obsolete.^{1.} Although including the
 4 outdated training ship "Hosho" as one of the Japanese
 5 carriers in the compilation of its strength, the
 6 prosecution dropped a similar vessel of the United
 7 States, the Langley, from its compilation of American
 8 aircraft carrier strength.^{2.}

9 Since Admiral Richardson stated that his
 10 report to this Tribunal in the nature of testimony
 11 was based on the United States official statistics,
 12 we ask the Tribunal to compare Exhibit 3001 which is
 13 admittedly official statistics from the Department of
 14 Navy of the United States^{3.} with the witness' testi-
 15 mony as to what the statistics were. The discrepancy
 16 becomes obvious. Using the prosecution's own evidence
 17 as the basis for Japan's figures and the official
 18 statement of the Department of Navy of the United
 19 States as the official basis for United States naval
 20 strength^{4.} the comparison reveals ten aircraft carriers
 21 for Japan and eight for the United States,^{5.} as being
 22 on hand December 7, 1941. It also displays the United

24 (1. Ex. 916, Tr. 9,251; Ex. 3006, Tr. 26,663

25 2. Ex. 3001, Tr. 26,611; Tr. 11,278.

3. Tr. 26,612

4. Tr. 26,645, 26,647

5. Tr. 26,647, Cf. Tr. 11,185)

1 States as superior in tonnage in every capacity. The
2 totals pertaining to tonnage show the United States
3 had almost a 3 to 1 superiority over Japan with some
4 1,273,000 tons to 490,000 for Japan^{1.} and with a great
5 superiority in the number of ships.

6 As to vessels under construction as of December
7 7, 1941, suffice to say the United States so far out-
8 stripped Japan not only in tonnage but in number of
9 vessels that there is little need for comment. The
10 statistics show Japanese building of 88 vessels with
11 375,000 tons as compared to the United States con-
12 struction of 1,321 vessels of 2,000,000 tons.^{2.}

13 It was Admiral Richardson himself who said:
14

15 "... at the end of 1941 the United States
16 had under construction in major combat vessels -- that
17 includes battleships, aircraft carriers, cruisers,
18 destroyers and submarines, a total of something over
19 2,000,000 tons."^{3.}

20 He also stated that the American figures indicated that
21 Japan had less than 500,000 tons under construction as
22 of that time.^{4.}

23 As noted before, the basic figures used to

- 24 (1. Tr. 26,648
25 2. Tr. 26,650
3. Tr. 11,277
f. Ibid.)

1 compute the naval strength then present and potential
2 between the two countries have never been doubted
3 either by the prosecution or defense.^{1.} For these
4 figures on the Japanese side were originally introduced
5 by the prosecution themselves and they of course must
6 stand on their own evidence, while the American figures
7 were introduced upon an official statement, as hereto-
8 fore stated, from the Navy Department of the United
9 States in Washington, D. C.

10 As to the importance of showing a comparison
11 between the two countries as to naval strength and
12 naval potentiality, the President of this Tribunal said:

13 "The statement as to the Japanese strength
14 is of no value to us unless we know the American."^{2.}

15 The President also said:

16 "The whole point is to show aggression on
17 the part of the Japanese. To gauge that properly we
18 would have to know the strength of the possible oppos-
19 ing fleets in the Pacific and the plans covering them."^{3.}
20

21 It therefore follows that such argument ensu-
22 ing between the defense and prosecution as to the mean-
23 ing of the term "On Hand" or "Under Construction"
24 becomes unworthy of discussion in view of the larger

25 (1. Tr. 26,613
2. Tr. 11,270
3. Tr. 11274.)

1 issues. ~~as~~ the parent documents are clear and un-
2 disputed, any technical interpretation seeking to
3 discourage the fact that the United States was in
4 possession of and was building a greatly superior
5 navy is pure sophism.

6 These comparisons are therefore important
7 only to show that Japan was aware of the naval poten-
8 tial of the United States and Great Britain and sought
9 to keep abreast, thereby discharging their naval
10 security obligations. In view of this we have testi-
11 mony indicating that the Japanese had knowledge of this
12 tremendous shipbuilding program of the United States ^{1.}
13 but that they did fail to keep abreast in construction. ^{2.}
14 This in spite of the fact they were aware of the so-
15 called American shipbuilding programs commonly referred
16 to as the Vinson Plan and the Stark Plan; together with
17 the Stinson "Hats Off" naval speech, the moving of the
18 fleet to Hawaii, the declaration of martial law in
19 the Philippines, the laying of mines in the eastern
20 entrance to the Singapore Straits, the reinforcement
21 of Australian troops in Malaya, the arrival of new
22 troops in the Philippines together with the military
23 conferences that were taking place between the
24
25

(1. Tr. 26,670
2. Tr. 26,669)

1. antagonistic powers. It is indicated that these
 1 matters and many more led to the Emergency Supple-
 2 mentary Naval Program of May 1941.^{2.}

3 Thus, let it not be said that Japan was alone
 4 in its naval preparations or that its naval leaders
 5 were unwarranted in their fears. Never did the naval
 6 leaders of Japan lose sight of the ability of the United
 7 States and Great Britain to rapidly mobilize and draw
 8 upon their vast resources.^{3.} There were other matters
 9 which set Japan apart from the war potential of the
 10 United States and Great Britain such as the lack of
 11 civilian aircraft capable of conversion.^{4.} Or the
 12 dangerously few merchant ships capable of conversion
 13 as compared with other powers.^{5.}

14 Is it to be considered as against the
 15 Japanese naval officers of Japan that they openly
 16 proclaimed to the world that the aircraft carrier
 17 as well as the battleship were the most aggressive
 18 weapons?^{6.} Or is it to be considered to their credit
 19 to have done so in an open handed manner for all to
 20 hear? The prosecution built its testimony with the
 21 view of culminating their story at its pinnacle with
 22

- 23 (1. Tr. 26,668
 24 2. Ibid.
 25 3. Tr. 26,671
 4. Ibid.
 5. Tr. 26,670-26,671
 6. Tr. 11,185)

1 the Japanese attack against the United States at
 2 Pearl Harbor. They sought to show a continuity of
 3 action, of planning and of purpose alleging that
 4 Japan built aircraft carriers and gained "overwhelming"
 5 or "decisive" supremacy.^{1.}

6 Such a fictitious theory should be dissipated
 7 in the light of the true facts and it should be noted,
 8 for example, that the Japanese aircraft carriers were
 9 constructed for action around the home waters -- not
 10 for strikes at great distances.^{2.} For they could not
 11 carry enough fuel for long scale operations.^{3.} The
 12 prosecution's own witness -- Admiral Richardson --
 13 said in his testimony that it was accurate to conclude
 14 that Japan had not built its carriers for such long
 15 range operations as the Pearl Harbor attack.^{4.} Yet
 16 on the other hand he testified that the United States
 17 carriers could easily have proceeded to the coast of
 18 Japan and returned under their own power.^{5.}

19 The prosecution speaks of only a portion of
 20 the United States Fleet being in the Pacific and that
 21 it is completely meaningless to attempt to deduce from
 22 comparative statistics that Japan built its navy in
 23

24 (1. Ibid.

25 2. Tr. 26,672

3. Tr. 11,272

4. Ibid.

5. Tr. 11,271)

1 self-defense against the United States.¹ While the
2 evidence before mentioned has clearly shown the super-
3 iority of the United States Fleet, as could be expected
4 with its two ocean obligation, the factor of mobility
5 of a modern fleet especially through use of the Panama
6 Canal has been completely overlooked by the prosecution,
7 and quite conveniently so for it puts to naught much
8 of their argument.

9
10 Assuming that the United States with its
11 two oceans to defend, engaged in war with Japan alone,
12 it would have been of little security to Japan to have
13 relied upon the false reasoning that the United States
14 would employ only its Pacific Fleet as a matter of
15 fairness. It would have been indeed a remarkable bit
16 of foresight to have, in the year 1936, predicted that
17 Germany would be engaging the United States Fleet in
18 the Atlantic Ocean and that therefore Japan would not
19 need a large navy for its security.

20 We have also to consider that Japan could
21 not have been so ignorant as to overlook that Great
22 Britain, the traditional ally of the United States,
23 had some of its fleet in the Pacific and that the
24 Netherlands as well possessed naval strength here.
25 If in the event of a combined attack against Japan,

(1. Prosecution Argument para. F-62, Tr. 39,406)

the Japanese Navy as it existed would have looked
1 pitifully small indeed.

2 The dwarfing of the Japanese shipbuilding
3 plans when compared to the vast construction of the
4 United States is discounted by the prosecution in
5 their allegation that America was building ships
6 for other countries engaged in war against Germany
7 and that there is no evidence that she had any
8 intention of attacking Japan or of threatening to
9 do so.^{1.} We point out again the movement of the
10 United States Fleet to Hawaii^{1.} which admittedly was
11 for the express purpose of affecting Japan and also
12 refer the Tribunal to the evidence which has hereto-
13 fore been cited in other arguments which gave Japan
14 definite reason to believe it was endangered, contrary
15 to the conclusion now advanced by the prosecution.
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(1. Tr. 11,295)

III. MANDATED ISLANDS

1 The question of whether Japan fortified the
2 Mandated Islands in violation of Article 22 of the
3 Covenant of the League of Nations or its treaty with
4 the United States^{1.} is not the real issue here involved.

5 Although the prosecution makes the charge that "the
6 expansion of Japan's Navy was for the purpose of ag-
7 gressive war is well evidenced by the fact that she
8 illegally fortified the mandated islands"^{2.} it has
9 behind it neither the benefit of logic nor does it
10 exhibit an understanding of the issues before this
11 Tribunal.
12

13 For them to state that "there could be no
14 contention that this (fortification of the Mandated
15 Islands) was done in self-defense since Japan had no
16 right to fortify them even for self-defense" is shallow
17 reasoning.^{3.} We may just as well say if a man carries
18 a gun in violation of law he has precluded himself the
19 right to assert self-defense even though he uses that
20 weapon in self-defense. Can it reasonably be argued
21 that the violation of a treaty could not take place
22 under the impetus of action in self-defense and that
23 such action destroys the right of self-defense? Cer-
24 tainly the prosecution must confine themselves to the
25

(1. Ex. 23, T. 9081; Ex. 29, T. 9084

2. Pros. argument para. F-64, T. 39408

3. Pros. argument para. F-64, T. 39408)

1 issues involved. It is again a matter of whether such
2 alleged fortifications took place for the purpose of
3 accomplishing aggressive war. The contention of the
4 defense has been and is that the evidence clearly
5 demonstrates there was no fortification of the Mandated
6 Islands and that even assuming for the sake of argument
7 that there were installations which could be termed
8 fortifications, they were actually installations for
9 the purposes of self-defense and not for aggressive war.

10 If then the crux of the charge is that Japan
11 prepared the islands for military use for the purpose
12 of waging aggressive war, we proceed to face the evi-
13 dence clearly and to point out wherein it failed or
14 was disproved.

15 In regard to the attitude of the Japanese Navy,
16 it should be frankly stated that they regarded the
17 South Sea Islands as geographically situated so as to
18 constitute the bulwark of sea defense for Japan.^{1.} It
19 was felt that if these islands fell into the hands of
20 an enemy it spelled certain defeat for Japan.^{2.} There
21 is no doubt that the Navy would have carried out defen-
22 sive construction on the islands were it not for treaty
23 restrictions.^{3.} These frank admissions demonstrate

24 (1. T. 26468
25 2. Ibid
3. T. 26469)

1 clearly the practical attitude of an organization
2 charged with the obligation of performing its design-
3 nated function for its country -- that of providing
4 naval security. If it represents aggressive thought
5 then the Japanese Navy has companionship in the other
6 military branches of the world.

7 The prosecution charges that as early as
8 January 20, 1937 the Privy Council approved a decision
9 to enable naval officers to be appointed as adminis-
10 trators of the South Sea Islands. They also charged
11 that the evidence shows after 1932 and particularly
12 after 1936 military and naval works of all kinds were
13 constructed on an extensive scale.^{1.} The defense pro-
14 duced in person HAYASHI, Hisao, who was Chief of the
15 South Seas Board which was the administrative organiza-
16 tion of the South Seas Mandated Islands, from 1933 to
17 1936.^{2.} During this period the witness testified: "I
18 state positively there were no military installations
19 in the South Sea Islands while I held my post there."^{3.}
20

21 The evidence reveals that at that time the
22 Minister of Navy, Admiral OSUMI, Mineo, advised that
23 the construction of airfields for commercial purposes on
24 the islands had better be given up because it might
25

(1. Pros. argument para. F-65, T. 39409

2. T. 26491

3. Ibid)

1 cause difficulty with the League of Nations.^{1.} The
2 witness gives a detailed explanation of the transporta-
3 tion and commercial matters pertaining to some of the
4 Mandated Islands quite frankly. He denied that the
5 South Seas Board ordered the Nippon Yusen Kaisha not
6 to accept foreign passengers. And further denied that
7 the Minister of Navy or the Foreign Minister ever sug-
8 gested or ordered such a thing.^{2.} Surely if the prose-
9 cution were serious about their allegations that from
10 1932 Japan constructed military and naval works on the
11 islands they would have cross-examined this highly intel-
12 ligent, clear-spoken witness, but they failed to do so.^{3.}

13 The South Seas Bureau requested the assistance
14 of the Navy in the construction of cultural and indus-
15 trial facilities simply because there was no other
16 branch of the government to turn to.^{4.} In 1934 the
17 Bureau started a program of opening aerial communica-
18 tions between the islands for commercial purposes and
19 to aid in matters involving rescue work in case of ship-
20 wreck.^{5.} And the Navy took part in extending such help
21 as was requested "in so far as it could be done without
22 violating the relevant treaties and without interfering
23

24 (1. Ibid.

25 2. T. 26493-4

3. T. 26494

4. T. 26470

5. T. 26470)

1 with the Navy's proper function." ^{1.} Even then the Navy
2 was unable to assist much because of the state of af-
3 fairs in China and it was only after the China Incident
4 came more or less to a standstill that they were able
5 to give assistance in the way of technical materials,
6 labor and transportation. ^{2.} The Navy then actually car-
7 ried out a study to determine whether or not the assist-
8 ance to be given the Bureau could be construed as con-
9 trary to treaty requirements and concluded that even
10 though a development on an island such as an airfield
11 could in times of war be converted to military usage,
12 the fact that they did not per se constitute a military
13 establishment was within the limits of the treaty of
14 the mandate limitations. ^{3.}

15 The witness YOSHIDA, whose position with the
16 Navy connected him directly with such matters, testified
17 with considerable detail as to the exact installations
18 placed on various islands and his statements were not
19 contradicted on cross-examination by the prosecution. ^{4.}

20 It was frankly admitted that after November 5,
21 1941 the Navy decided for the first time to carry out
22 the construction of defense works on the Mandated
23

- 24 (1. Ibid
25 2. T. 26471
3. Ibid
4. T. 26487)

1 Islands. But it was not until after the middle of
2 November that the construction corps left Japan for
3 some of the islands.^{1.} But this was only after condi-
4 tions between the Western Powers and Japan had come
5 to the danger point of explosion and it would have
6 been militarily ridiculous for the Japanese Navy to
7 have sat back quietly with folded hands. Much as the
8 prosecution would like to construe the normal course
9 of conduct as criminal, common sense as well as legal
10 reasoning must be used in judging matters of this kind.
11 If Japan had entertained the thought of aggressive war
12 against the United States, Great Britain or the other
13 countries, surely they would not have waited until this
14 desperately late day to begin such military construction
15 on the life line of Japan.

16 The testimony of Admiral Richardson relative
17 to the Mandated Islands is answered by the defense
18 through the testimony of a Japanese naval officer who
19 pointed out that Japan did not have supply facilities
20 completed on these islands prior to the war or at the
21 beginning of war.^{2.} The prosecution allegation that the
22 use of the islands for military purposes after the com-
23 mencement of hostilities December 7, 1941 was not within
24 (1. T. 26477)
25 (2) T. 26478)

1. the right of Japan approaches, in our conception,
almost the point of facetiousness. Do they honestly
contend that in a time of war a country should stand
idly back observing a treaty which means almost certain
defeat if complied with?

It is not our purpose to set out in full the
answer given to all of the minute charges made by
Admiral Richardson in his report, especially the refer-
ences to General Order Number 1. Suffice to say that
he points out that the interpretation of General Order
Number 1 to the effect that supplies had been stored
on the islands was a misreading of the order and that
there was nothing therein which indicated that the
figures on the attached tables of the order proved that
stores must be on hand. It was pointed out that the
statistics merely indicated the program of the Fleet
of the amount they wished to have at those points without
indicating as to the method which was to be employed.
The Tribunal is referred to the pages of the transcript
containing the detailed testimony of former Naval Offi-
cer YOSHIDA^{3.} if they desire to make a study of the
matter.

The defense placed in the witness box KONDO,

- (1. Pros. argument para. F-68, T. 39413
2. T. 26480
3. T. 26467-88)

Shunsuke, who served as Chief of the Nanyo-Cho, or
1 the South Seas Bureau, from 1940 to 1943.^{1.} We did
2 this solely for the purpose of providing the Tribunal
3 with a running account of testimony concerning the
4 periods covered by the prosecution charges. He testi-
5 fied as to the conditions on many of the mandated is-
6 lands and did so from personal experience. He spoke
7 of the ten year plan for the development of the islands
8 and told what it encompassed. He denied the prosecu-
9 tion allegation of military installations or fortifica-
10 tions. But the prosecution did not see fit to challenge
11 him by way of cross-examination.^{2.}

12 In direct answer to the prosecution charges
13 as to the construction of military installations on
14 Saipan we placed in the witness box OBARA, Junichi,^{3.}
15 a director of a large joint stock company with offices
16 in the South Seas. He told with frankness and clarity
17 about conditions there but the prosecution did not de-
18 sire to cross-examine him either.^{4.}

19 The prosecution points to the fact that visi-
20 tors were discouraged from visiting the various islands^{5.}
21 but unquestioned evidence of the defense shows that such
22

23 (1. T. 26495

24 2. T. 26498

25 3. T. 26499

4. T. 26502

5. Pros. argument para. F-69; T. 39415)

1 restrictions were over-exaggerated. In fact, it was
2 testified that a Japanese company, the Nanyo Trading
3 Company, which had offices in the American controlled
4 Island of Guam, quit because of numerous discriminatory
5 restrictions, and that in 1936 Japanese were prohibited
6 by American authorities from going there.^{1.}

7 The testimony of all of the prosecution wit-
8 nesses was adduced by paper alone. And this, as the
9 prosecution admits and the court well knows, consisted
10 almost entirely of statements in abbreviated form taken
11 from illiterate natives on several islands,^{2.} foreclosing
12 any chance of cross-examination. The only affidavit
13 which they produced of direct testimony other than
14 these natives was that of a Japanese national named
15 WAKAMATSU.^{3.} That witness lived in Japan and could
16 have been produced if the prosecution had so desired
17 for it was upon simple inquiry that the defense was able
18 to locate him. We charged in our opening statement
19 "that this witness' testimony was so vastly different
20 from his written testimony as given by the prosecution
21 that he must either be challenged as usurping the
22 truth or the falsity of the prosecution evidence will
23 stand as a glaring example of the disadvantage of
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25 (1. T. 26502

2. Pros. argument para. F-67; T. 39410

3. T. 9091)

1 accepting paper testimony in place of the witness in
2 the box." ^{1.} Upon this witness' complete refutation of
3 the prosecution statement attributed to him and of-
4 ^{2.}ferred in evidence by them the prosecution had the
5 opportunity of cross-examination and failed completely
6 in their half-hearted attempt to affect his testimony
7 in any way.

8 The prosecution impetuously seeks to cover
9 over this embarrassing portion of their presentation
10 of evidence by suggesting its willingness to submit
11 to the Tribunal the choice of which was the most trust-
12 worthy type of evidence -- that given by the witnesses
13 for the defense, who one after another appeared in
14 court in person rendering themselves available for
15 cross-examination, or the paper evidence of the illit-
16 erate natives on the islands who could never testify
17 in person because the prosecution would have been
18 ashamed and reluctant to produce them before this high
19 Tribunal as reliable witnesses.
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24 (1. T. 26406
25 2. T. 26532)

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1 It is hard to believe that the prosecution
2 is being other than facetious when it charges the
3 eight defense witnesses with evasiveness^{1.} concern-
4 ing their testimony in rebuttal to the prosecution
5 charges concerning the Mandated Islands. Especially
6 so when the defense produced them in person with the
7 result that the prosecution completely failed to
8 cross-examine six of them and half-heartedly questioned
9 the other two.^{2.} We, too, would like to call upon
10 the Tribunal to compare the type of evidence presented
11 by the defense with that offered by the prosecution.
12 In this regard we call attention to the fact that the
13 only witness which the defense was able to cross-
14 examine was one which they themselves obtained and put
15 on the stand personally. Objection was
16 duly made to such testimony given in affidavit
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- 22 1. Prosecution argument, para. F-67, T. 39411.
23 2. HAYASHI, T. 26949 - no cross-examination.
24 KONDO, T. 26498 - no cross-examination.
25 OBARA, T. 26502 - no cross-examination.
MUKAWA, T. 26507 - no cross-examination.
SUZUKI, T. 26512 - no cross-examination.
GOTO, T. 26521 - no cross-examination.
IWASAKI, T. 26527 - no cross-examination.

1.
form by the prosecution.

1 The witness SUZUKI who was not cross-examined
2 by the prosecution, however, receives this comment in
3 the prosecution summation: "It should be noted he
4 did not testify that he never saw things that could be
5 used as military installations or easily converted
6 thereto."^{2.} This in face of the direct testimony of

7 the witness that there were no military fortifications
8 on the island. The prosecution evidence presented by
9 Admiral Richardson^{3.} pertaining to fortifications of
10 the island and the issue of whether there were bases
11 thereon was predicated not upon his own knowledge but
12 upon intelligence reports unverified and highly doubt-
13 ful.^{4.} All of which were answered most emphatically
14 and directly by a witness who was not discredited in
15 the slightest on cross-examination.^{5.}

16
17 The prosecution, realizing the utter and
18 complete failure of its proof during the general
19 phase attempted through the guise of rebuttal to
20 introduce further testimony in their usual fashion by
21 producing an affidavit from an American naval officer
22 and again failing to allow the defense the right of

24 1. T. 3090.

25 2. Prosecution Argument para. F-67, T. 39413.

3. T. 11197.

4. T. 11175.

5. T. 26480.

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1 cross-examination.^{1.} We sincerely urge the Tribunal
2 in viewing the evidence concerning this portion of
3 the case to compare the methods used by the prosecu-
4 tion and the defense in rendering evidence which might
5 be of aid to this Tribunal, and to at the same time
6 recall the sincerity and directness with which the
7 defense tackled the offering of proof by the prosecu-
8 tion in an honest and open-handed fashion.

9 IV. STRATEGIC PLANNING.

10 Regarding the prosecution argument concern-
11 ing the strategic and tactical planning and prepara-
12 tion of the navy^{2.} it becomes necessary to point out
13 that the preparation and possession of potential war
14 plans against a possible enemy is no offense either
15 under the Charter or under the rules of common sense.
16 The evidence has revealed that the United States had
17 potential war plans against the Japanese in highly
18 detailed form.^{3.} The prosecution's sole naval witness,
19 Admiral Richardson, in his high capacity, notified
20 this Tribunal that it was an established naval
21 procedure of the powers in recent times to have pre-
22 arranged naval plans against potential war enemies.^{4.}

24 1. Ex. 2840, T. 38115.

25 2. Prosecution Argument para. F-70, T. 39416.

3. Ex. 2851-A, T. 25547.

4. T. 11290.

1 The prosecution did a poor job of producing
2 evidence concerning naval plans and preparations for
3 the attack on Pearl Harbor and elsewhere relying
4 largely on what was admittedly the simple recollection
5 of a Japanese warrant officer of these highly detailed
6 matters.¹ The defense, in an honest and straight
7 forward fashion supplied these omissions by producing
8 for this Tribunal the intricate planning of the
9 Japanese Navy which led to those attacks.

10 At the time, the Tribunal questioned as to
11 why the defense was going into such detail
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25 1. Ex. 1285, T. 11289.
2. T. 26705 and following.

1 concerning the matter of the plans that led to
2 initial hostilities.^{1.} There were two reasons. The
3 first was to serve the Tribunal in as full a capacity
4 as possible by presenting the accurate facts for the
5 pages of the record. The second was to show that the
6 plans for the attack on Pearl Harbor or those encom-
7 passed in General Order Number 1 were not long in
8 preparation and that the navy in terms of military
9 time was called upon to perform a tremendous naval
10 operation with inadequate preparation which clearly
11 destroys the theory of a long preconceived plan of
12 waging war.

13 The opening of hostilities, namely, the
14 attack on Pearl Harbor, was decided upon only a short
15 time before the outbreak of war.^{2.} The plan itself
16 seems to have been drafted for the first time by
17 Headquarters of the Combined Fleet around May of
18 1941.^{3.} It was simply a potential and venturesome
19 plan to be used in the event of war with the
20 United States and the navy at all times
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- 22
23 1. T. 26743.
24 2. T. 26710.
25 3. Ibid.

1 strongly felt that war with the United States could
2 be averted.
3 1.

4 The fact is highly immaterial that different
5 branches of the navy considered various proposed war
6 plans as advisable or inadvisable. The real question
7 is whether or not such plans constituted aggressive
8 planning and preparations for aggressive war, that is,
9 a war without just provocation or excuse. The
10 evidence does reveal that the Pearl Harbor Plan
11 together with Operational Order No. 1 was the brain
12 product of Admiral YAMAMOTO, Isoroku, Commander in
13 Chief of the Combined Fleet and that this plan was
14 opposed by the Chief of the Naval General Staff
15 NAGANO.
16 2. The evidence further establishes that such
17 planning and preparations were strictly matters
18 within the jurisdiction of the Naval General Staff
19 and the Combined Fleet having nothing to do with the
20 Navy Ministry.
21 3.

22 It is difficult to imagine that Japan had
23 either planned or prepared for aggressive war
24 against the Western Powers or was ready for such a
25 war when we find the deplorable condition of their

1. T. 26711.
2. T. 26717.
3. Ex. 3007, T. 26710.

1 fighting air force thoroughly lacking training or
2 time to train.^{1.} Evidence further reveals the tre-
3 mendously important problem of refueling Japanese
4 ships at sea and pointedly presents again the fact
5 that Japanese aircraft carriers did not have suffi-
6 cient radius of action to accomplish the mission
7 imposed upon them without improvised means.^{2.}

8 Even in the midst of their operations
9 there was a carefully prepared order that the fleet
10 was to be recalled from deployment and returned home
11 in the event of reaching an amicable settlement
12 before December 8, 1941.^{3.} The navy fully expected
13 that the task force deployed against Pearl Harbor
14 would be detected at least thirty to forty minutes
15 before the attack through observation of the United
16 States forces alone. And it was thought possible that
17 radar detection would be made more than an hour before
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1. T. 26719.
2. T. 26720.
3. T. 26726.

1. the attack. The Navy fully expected that before
1 hostilities commenced that proper diplomatic steps
2 would have been taken and that the United States would
3 know that a state of war existed with Japan.^{2.}

4 Thus it becomes difficult to perceive wherein
5 the Japanese Government and its navy differed from
6 comparable powers. The voluminous evidence offered
7 by both the prosecution and defense must be considered
8 to have been directed at the over-all issue of whether
9 the activities of the Navy were expressive of aggres-
10 sive motives on the part of these accused. We submit
11 the record now reveals a complete failure of the
12 prosecution to achieve its objectives -- namely, to
13 establish a conspiracy to accomplish aggressive war.
14

15 THE PRESIDENT: After hearing the last two
16 summations, it is clearly necessary for us to remind
17 counsel that the summations must be kept within the
18 evidence.

19 MR. ROBERTS: We submit, if your Honor please,
20 that we have tried in all respects to do that.

21 THE PRESIDENT: Except on the law, you can-
22 not quote the record at Nuernberg unless it is in
23 evidence here, nor can you quote the opinions of
24 statesmen, however distinguished.
25

1. Tr. 26,729.

2. Tr. 26,730.

1 The opinions of Mr. Littleton and of
2 Mr. Hoover are not in evidence, and would not be
3 admitted if they were tendered, and you know that.

4 The opinions of the two statesmen were referred
5 to in the summation read by Mr. Logan.

6 We cannot allow any statesmen to decide the
7 issues that we must decide. In any event, they did
8 not have a fraction of the evidence that we have to
9 guide them. We have been listening to evidence on
10 both sides for nearly two years. For every British
11 or American statesman who thinks as they did, there
12 may be fifty who think otherwise. We cannot be guided
13 by the opinions of statesmen. We can be guided only
14 by the evidence properly before us.

15 We decided not to interfere with the summations
16 if that could be avoided. It cannot be avoided in
17 cases like those I have just referred to.

18 MR. ROBERTS: It was my understanding that
19 the quotations referred to by Mr. Logan were all taken
20 from the record.

21 THE PRESIDENT: We have never admitted
22 opinions of that kind. I have just asked Mr. Logan to
23 tell me where he got those quotations, and he says he
24 does not know. He has to try to find them at his house.

25 MR. ROBERTS: That, of course, is something

with which I am not acquainted.

1 Mr. Blewett will continue.

2 THE PRESIDENT: Mr. Blewett.

3 MR. BLEWETT: If the Court please, this is
4 a portion of the Pacific War Phase: Japan's Military
5 Preparedness.

6 JAPAN'S MILITARY PREPAREDNESS

7 NOT AGGRESSIVE IN CHARACTER.

8 The prosecution, as was its burden, has
9 attempted to prove that these accused to further the
10 ends of the alleged conspiracy carried on by the army
11 took measures toward intensive preparations for wars
12 of aggression. It would be but logical and natural
13 for anyone, once the idea of aggressive war was thought
14 of, to contemplate the existence of a war machine ponderous and inexorable -- modern, scientific and deadly.
15 We all know that Germany had such a war machine,
16 which had been in the making since the Versailles
17 Treaty. It was kept no secret. On the contrary it
18 was paraded before the world, and for years before
19 World War II distinguished statesmen and visitors from
20 all nations were treated to a display of soldiery, tanks,
21 planes and scientifically destructive weapons never
22 before equalled in any age. It was a war machine
23 designed not for defense but for offense, a most

important consideration indeed here.

1 When this trial was planned those persons
2 assigned to prosecute the Japanese had but one precedent
3 to follow -- Nuernberg. It was a new field unexplored
4 hitherto by any group of nations. It was only normal,
5 therefore, for the prosecution here, before any ade-
6 quate investigation could be made to proceed on the
7 thesis that Japan, "a partner of Germany," so they
8 thought, had likewise built up a gigantic mechanism
9 designed to terrify, destroy and conquer far-flung
10 portions of the world. That was a remarkably specious
11 deduction, as we shall demonstrate.

13 They had the boast (now known as having no
14 substance) in mind, perhaps, that the peace treaty
15 would be signed in the White House; that the Pacific
16 coast would be attacked, and many other erroneous ru-
17 mors which spring from fertile imagination during a
18 war. And they had too the very honest belief, perhaps,
19 as mentioned before, that would ordinarily accompany
20 the conjuration of aggressive war -- that any threat
21 to wage offensive war must as a definite requisite be
22 accompanied or backed up by a nation armed to the
23 teeth with equipment and arms designed for long range
24 campaigns.
25

Under these mistaken suppositions the

1 Indictment was framed wherein the prosecution proposed
2 to produce competent evidence of general military
3 preparations for wars of aggression. That it failed
4 utterly to do so, and that it was completely impos-
5 sible for it to do so, is abundantly clear. But the
6 failure of the prosecution to fulfill for the Tribunal
7 the promise it undertook in the Indictment and in some
8 opening statements is not the fault of its personnel.
9 No corps of investigators ever assembled could have
10 found proof of the type required to make out a case
11 against these accused. It simply did not exist at any
12 time.

13 The prosecution was therefore delimited in
14 the scope of its material, as is manifested by its
15 dubious quality and quantity, the answering evidence
16 of the defense, and the weakness of the prosecution
17 summation.

18 The evidence, such as it is, was confined to
19 what has been proved by the defense to be matters
20 purely of national defense, and as to the purport of
21 that evidence we have no quarrel. Japan does not con-
22 tend that she neglected her national defense during
23 the period alluded to in the Indictment. We do insist,
24 however, that Japan did not increase her armaments for
25 purposes of aggression, and we maintain that there is

1 no substantial proof presented to this Tribunal that
2 she did so.

3 The prosecution labors to insist, on the
4 other hand, that it has met the burden of proof. It
5 bears the onus, as in any criminal action, to prove
6 beyond a reasonable doubt that the military measures
7 adopted by Japan commencing in the early 1930's had
8 aggression as their purpose in themselves not limiting
9 its evidence to the fact that Japan was endeavoring
10 only to maintain a safe margin of national defense.

11 It is but natural for an independent nation,
12 and a solemn duty on its leaders, to effectuate the
13 strongest possible defensive power within its capacity
14 to achieve. Only a decadent nation would do otherwise
15 when all about her were straining every resource to
16 arm and consolidate their security.

17 Subsequent to World War I most nations who
18 participated, remembering their woeful lack of prepared-
19 ness and the dangers inherent therein, pledged that
20 never should there be a recurrence of that situation.
21 It may have been slow getting under way but as time
22 passed and world conditions grew more troubled national
23 defense emerged as a paramount problem of grave national
24 consciousness in most advanced countries.
25

The United States undertook comprehensive

measures to strengthen her defenses, and her army
1 early worked out a plan for the utilization of her vast
2 economic resources, which was one direct cause for
3 her phenomenal production of war materials, and achieve-
4 ment never surpassed in all history, and the vital
5 element in the smashing victory of the allied armies.
6 Many of us here in those years, even before Hitler
7 emerged from obscurity, attended lectures for reserve
8 officers during the winter months and participated in
9 summer maneuvers. The U. S. at that time had no enemy
10 objective, as the prosecution rhetorically demands of
11 these accused, and her borders to the north and south
12 were more than friendly. Could America have then been
13 charged with preparing for aggressive war?
14

15 If the Court please, I refer to a remark made
16 by the Chief of Staff of the United States Army in
17 1931. I have the release from the War Department,
18 which has not been introduced in evidence, and I have
19 endeavored to obtain the citation of the permanent
20 record, which I have not yet obtained from Washington.
21

22 THE PRESIDENT: The summation should be con-
23 fined, of course, to the law and to the evidence
24 admitted. The opinion of the Chief of Staff of the
25 United States is quite immaterial.

MR. BLEWETT: It is not an opinion, sir.

1 It is an explanation of what the War Department was
2 doing at that time in preparation for self-defense,
3 and was made to a commission--

4 THE PRESIDENT: It can only be used as evi-
5 dence, and it is not in evidence.

6 MR. BLEWETT: I shall pass over to page 3,
7 the last paragraph on the page, then, sir.

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Nearer Japan's homeland, its veritable neighbors, China and the USSR were arming on a scale of huge proportions. Russia was well into its second Five-Year Plan before Japan, despite its alarming financial difficulties, was able to make a feeble beginning. It is well known now that there was no real coordination between the High Command in Japan, the government and industry until the middle of 1943. For Japan to ignore completely the changing and alarming world condition in those early years before 1941 would have been gross stupidity, and for her leaders to be blind to these circumstances would have cast them into moral degradation and political obsolescence.

The prosecution throughout displays a consistent predilection to add the seemingly obnoxious term "aggressive" wherever and whenever in its summation it has occasion to refer to Japanese military projects, but significantly does not point out any specific evidence to prove that qualification.

Under certain occasions the same type of armaments could be utilized for defensive as well as for offensive warfare. What then, is the criterion to differentiate an aggressive armament from one designed for defense? In our opinion, we might adopt

two comparatively clear standards to decide the question.

The first is concerned with the comparative amount of the armaments. An armament may be designated as aggressive when it is at a certain period in a nation overwhelmingly greater in quantity in comparison to that of neighboring nations, and apparently exceeding adequate requirements for defense against possible attack from outside.

The second standard to be set up constitutes the kind or quality of weapons or ammunition contained in the armaments project. For example, if the military authorities of a nation attempt to construct a long range cannon capable of reaching the capitol of the neighboring country, or construct a fleet of superbombing airplanes with great flying radius equipped with a sufficient number of incendiary bombs to attack and burn all or most cities and villages of the neighboring country; or again, compound some deadly destructive weapon such as an atomic bomb, then the defense system of that nation might rightly be termed to be in the nature of aggressiveness because those weapons are of no use whatever if that particular nation has no purpose in mind other than to defend her own territory.

1 With these standards as a premise permit us
2 to analyze the plans of the Japanese Army during the
3 period between 1928 and 1941 to determine whether they
4 were really aggressive. But before undertaking this
5 examination it is proper to answer that one question
6 alluded to hitherto in passing. The prosecution asks:
7 "If the (Japanese) plan were defensive, as alleged by
8 the accused, it is pertinent to ask against what nation
9 was it thought it necessary to execute defense prepa-
10 rations."^{1.}

11 In answer to this amazing query we refer
12 to exhibit 2375, which is a description of a celebra-
13 tion in Red Square in Moscow by an eminent writer
14 regarded as disinterested in the cause of either Japan
15 or Soviet Russia.^{2.} A short passage from that exhibit
16 reads:

17 "The parade of civilian workers through
18 Red Square that day was enlivened by numerous carica-
19 tures of Germans and Japanese. . ."

20
21 Needless to state that the Soviet Government
22 had power to stop it, if that spectacle was against
23 her trend of mind. The author further describes:

24 "In addition to the military development which

25 1. F-7, T. 39334.
2. T. 18429-30.

1 was obvious on all sides, the country seemed to be
2 undergoing a rapid industrialization, and the personal
3 comfort of the people was being sacrificed to the
4 development to heavy industry . . . the parade of
5 military forces through Red Square lasted from ten
6 o'clock in the morning until late afternoon . . . there
7 were contingents from the various military branches,
8 including light and giant tanks . . . and from the
9 aviation corps."

10 The spectacle witnessed by the author of the
11 article from which those quotations were taken took
12 place on 7 November 1935, and was an eye-witness
13 account of the state of affairs at a time when the
14 USSR was on friendly diplomatic terms with Japan.
15 Is it any wonder that the leaders of a nation with this
16 kind of a neighbor thought it prudent and wise to make
17 such military preparations as were within their limited
18 scope for defense against any contingency that might
19 confront their country at any time? The question put
20 by the prosecution, it is appreciated, is but at the
21 expense of thought, but there is an answer, and a
22 complete one at that.

23 THE PRESIDENT: We will adjourn until
24 half-past nine tomorrow morning.

25 (Whereupon, at 1600, an adjournment
was taken until Thursday, 11 March 1948, at 0930.)

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